Supreme Court, U.S.
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No. 98-8384

In The

Supreme Court of the United States

TERRY WILLIAMS,

Petitioner,

v.

JOHN TAYLOR, Warden, Sussex 1 State Prison,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

JOINT APPENDIX
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Chronology of Relevant Docket Events

07/07/86	Terry Williams indicted for capital murder of Harris Stone
07/08/86	E.L. Motley appointed to represent Terry Williams
08/29/86	Robert J. Smitherman appointed to serve as co-counsel for Williams
09/29-30/86	Capital murder trial including penalty phase – Williams is convicted of capital murder and robbery; jury recommends death sentence
11/19/86	Sentencing hearing – Judge James F. Ingram imposes death sentence and sets execution date.
11/26/86	Notice of appeal filed.
09/04/87	Virginia Supreme Court affirms conviction and death sentence on direct appeal
01/11/88	Supreme Court of the United States denies certiorari on direct appeal (484 U.S. 1020)
08/25/88	Petition for Writ of Habeas Corpus Filed in Circuit Court for City of Danville
04/21/95	Amended Habeas Corpus Petition Filed in the Circuit Court for the City of Danville
06/15-16/95	State habeas hearing before Judge Ingram, Circuit Court for the City of Danville.
02/14/96	Order of Circuit Court for City of Danville transferring case to Virginia Supreme Court
05/06/96	Order of Virginia Supreme Court remanding case to Circuit Court for City of

	Danville for findings of fact and recommended conclusions of law and dismissing certain of Williams's claims
08/15/96	Memorandum Opinion of Circuit Court for City of Danville (Ingram, J.) finding that Williams's counsel was ineffective as to investigation and introduction of mitigation evidence at penalty phase and recommending that Williams be resentenced.
06/06/97	Order of Supreme Court of Virginia Denying Writ with Accompanying Opinion
09/29/97	Order of United States District Court for the Eastern District of Virginia, Alexandria Division (Cacheris, J.) granting petition to proceed *In Forma Pauperis*, appointing counsel to represent Williams, and staying execution.
12/12/97	Petition for Writ of Habeas Corpus filed in United States District Court
04/07/98	Order of United States District Court and Memorandum Opinion Granting Writ and Vacating Death Sentence.
04/21/98	Respondent's Notice of Appeal
05/07/98	Petitioner's Notice of Cross-Appeal
09/24/98	Oral Argument in United States Court of Appeals
12/18/98	Decision of the Court of Appeals for the Fourth Circuit reversing decision of the United States District Court and denying writ
12/31/98	Petition for Rehearing and Suggestion for Rehearing *En Banc*

01/15/99	Order of United States Court of Appeals Denying Petition for Rehearing and Suggestion for Rehearing *En Banc*
01/25/99	Mandate of Fourth Circuit issued
02/10/99	Order of Circuit Court for City of Danville Scheduling Execution for April 6, 1999
03/03/99	Order of United States Court of Appeals Denying Motion to Recall the Mandate and to Stay Execution
03/05/99	Motion to Supreme Court of the United States for Leave to Proceed *In Forma Pauperis;* Petition for a Writ of Certiorari; and Application for a Stay of Execution
04/02/99	Stay of execution granted
04/05/99	Writ of certiorari granted

Circuit Court for the City of Danville

[Caption Omitted in Printing]

Transcript of Criminal Trial

Detective T. A. Brown – Direct

* * *

[400] A. "My name is Terry Williams. I am thirty-one years old. I have a seventh grade education. I have been advised of my rights and I have signed a waiver of my rights. I make the following statement of my own free will with no threats or promises having been made to me. I don't remember the date, but it was back before Thanksgiving of last year. I had gone to Dee Dee Stone's house on Henry Street, Dee Dee's father was there. No one else was there except him. He had been drinking a lot. He was on the bed. He asked me if I wanted a drink. I told him, "No." I asked him if I could borrow a couple of dollars and he told me, "No." We started arguing and things started going around in my head. I just wanted to get back at him. I don't know what. He just laid back like he had passed out. He was laying there talking and moaning to himself. I went into the kitchen. I saw the butcher knife. I didn't want to use it. I was looking for something to use. I went into the bathroom and I saw the mattock. I picked up the mattock and I came back into [401] the room where he was at. He was laying on the bed. He was laying on his back. I took the mattock and I hit him on the chest with it. He raised up and was gasping for his breath. He fell over to his side and I hit him in the back with the mattock. He fell back on the bed. I went and put

the mattock back in the bathroom. I came back into the room. I took his wallet from his pocket. He had three dollars in it. I got the three dollars from it. I left him there. He was still gasping for breath. I walked across Main Street bridge. I threw the wallet over the bridge into the river. I then went to the Cabaret. The next day I heard that he had died. Last night I wrote a letter to the Chief of Police about what I had done. I want some help for what I have done. Detective T. A. Brown has read this statement back to me and it's true and correct to the best of my knowledge. Signed, Terry Williams."

Q. All right, so in this statement he says that he didn't remember the date but it was before Thanksgiving?

* * *

[404] A. He stated that the statements that he made on April the 25th was true and correct.

Q. And why did he say he had changed it in his April 28th statement?

A. He had talked to members of his family, his mother and a brother, and they had told him that he was dreaming and had nightmares.

Q. And he had said on April the 28th that what he said on April the 25th was a nightmare?

A. Yes, sir.

Q. Dreams?

A. Yes, sir.

Q. But on May the 2nd what did he say?

A. He said that what he had originally told us was true.

Q. What he said on April the 25th was true?

A. Yes, sir.

Q. Did he tell you anything else?

A. Yes, sir.

Q. What, if anything, else did he say in regard to this incident?

A. He indicated that in trying to determine the time [404a] that in going to the Cabaret, that the Cabaret started at 9:00 o'clock. He stated that the Cabaret when he got there had already been going on, that he knew it was not midnight yet.

Q. So he had gotten to the Cabaret before midnight?

A. Yes, sir.

Q. In other words, he had left Henry Street and gotten to the Cabaret before midnight?

A. Yes, sir.

Q. Where is the Cabaret?

A. It's on Monument Street.

Q. All right, and what else did he say in regard to this offense?

A. I was asking him about the money in the wallet, and he indicated that it was only three or four dollars in it. He stated that he had not searched through the wallet, he only took what he saw.

Q. All right. Did he change anything in his statement in regard to the one he gave you on April 25th?

A. Yes. He corrected the bridge. He stated that it was the Worsham Street bridge and not the Main Street bridge because he had gone across North [405] Main and up to Worsham to the Quick Check Market, and down Worsham Street, across that bridge, and when he got down to the end where the fire station was at [sic] is where he threw the wallet over the bridge and into the water.

Q. All right, so he said he crossed North Main Street and then he went on up . . .

A. By the Quick Check Market, which is on Worsham Street.

Q. And then down across the Worsham Street bridge?

A. Yes, sir.

Q. All right, and he said that he didn't search through the wallet but he took how much?

A. Three or four dollars was all that was showing. That's what he told me.

Q. And he threw the wallet over the Worsham Street bridge?

A. Yes, sir.

Q. All right. Now this was on May the 2nd?

A. Yes, sir, of 1986.

Q. Did he appear to be cooperative on this occasion?

* * *

[411] A. Okay. "My name is Terry Williams. I am thirty-one years old. I have a seventh grade education. Detective Evans has advised me of my rights and I have read them along with him. I understand my rights and I have signed a waiver that I understand my rights. I give the following statement to Detective Evans of my own free will. No threats or promises have been made to me. On Friday, April 25th, 1986, I gave some statements to Detective Evans and Brown telling them about some crimes I committed. I called my mother on Saturday, the next day, and I asked her about any blood that I had on my clothes."

Q. All right. What he did was he was talking about the crimes that he committed. He was talking about the offense here with Mr. Stone and the robbery of Mr. Stone. Is that correct?

A. Yes, sir.

Q. All right, and then he said that he talked to his mother. Is that correct?

A. That is correct, sir.

Q. All right, just read to right there. Go ahead and finish what you were reading.

[412] A. Okay. "I told my mother that I had talked to the police. She told me I needed to see a psychiatrist. I have nightmares and that was the reason I told the police about the crimes. I dreamed all the crimes I told the detectives about. I did not do them. I have also talked to my brothers on the phone. They said that I did not kill

the man on Henry Street and take his wallet. They said that he died of natural causes and he still has his wallet."

Q. So he denied these offenses, which would have been the murder and the robbery?

A. Yes, sir.

Q. That was what he was talking about when he was talking about the crimes?

A. Yes, sir.

Q. Now that was on April the 28th. Is that correct?

A. That is correct, sir.

Q. Did you have occasion to talk with him again along with Detective Brown on May the 2nd?

A. Yes, sir, I did.

Q. Was he advised of his constitutional rights at that time?

[413] A. Yes, sir, he was.

Q. Did he sign a waiver of his rights?

A. Yes, sir, he did.

Q. And I believe this waiver has been introduced as Commonwealth's exhibit number twelve?

A. Yes, sir.

Q. What did he say in regard to this offense on that occasion?

A. All right, he stated that he went to the Cabaret at the Union Hall.

Q. Let me ask you this first: Before . . . He told you some more about this offense. Is that correct?

A. Yes, sir.

Q. What did he say about the statement that he had given on April the 25th?

A. He said that the statement that he gave us on April the 25th were true.

Q. All right, and why did he say he had given the statement on April 28th saying that they were just dreams?

A. Because he had talked to his mother and brothers and they told him he was having dreams.

Q. They told him he was having dreams?

* * *

[507] JUDGE INGRAM: All right, let the record show that we are now in Chambers. The defendant is present with his attorneys.

[508] Mr. Motley and Mr. Smitherman. Also present is the attorney for the Commonwealth. All right, Mr. Motley, I believe you want to put some things on the record.

MR. MOTLEY: Yes, sir. Your Honor, the reason I had asked leave to handle this matter in Chambers, the Court may recall that we had originally asked that the defendant be examined down at Central State and following an examination of him down there by Dr. Centor and Dr. Ryans we believed it was appropriate and in order that we exercise our option under the Supreme Court

case of *Ake v. Oklahoma* to seek an independent psychiatric examination of the defendant. And the Court arranged for such independent examination by Dr. Mansheim at his office in Tidewater, Virginia, and Mr. Smitherman and I have received Dr. Mansheim's report to the Court dated September 6th, 1986 detailing the results of the doctor's findings. And what I [509] wanted to do this afternoon was to put on the record a few questions to the doctor and to state for the record why we did not call the doctor as one of our witnesses in the case although he had been the independent examining psychiatrist of the defendant.

JUDGE INGRAM: All right, before you do that let me put the doctor under oath so his testimony can be preserved.

DR. PAUL A. MANSHEIM, a witness called on behalf of the defendant, having been administered the oath by the Court, testified as follows:

DIRECT EXAMINATION

By Mr. Motley:

Q. You are Dr. Paul A. Mansheim, M.D.?

A. Yes.

Q. All right, Dr. Mansheim, we earlier have gone through your qualifications and you have given me your list of educational honors and qualifications, and of course there has been no question as to your being an expert as a foresic [sic] psychiatrist. So we won't go into all that. Dr. Mansheim, did [510] you have an opportunity

to examined [sic] Mr. Terry Williams pursuant to order of this Court?

A. Yes. I saw Mr. Williams on September 15th, 1986 in my office in Norfolk.

Q. I believe he was transported down there for you to examine him?

A. That's right.

Q. And I believe you also had the benefit of statements and materials from filed of counsel in this case. Is that correct?

A. That's correct.

Q. All right, and based on all of that you did proceed to examine the defendant and prepare a report to this Court and to counsel?

A. Yes, I did.

Q. All right, what were the specific issues that you were asked to address in examining Mr. Williams?

A. There were several. The first was an opinion with regard to competency to stand trial. The second was an opinion in regard to the defendant's mental status at the time of his alleged offenses. Another was an opinion with regard to whether or not the defendant acted under extreme mental [511] or emotional disturbance at the time of the offense, and finally whether there were any mitigating factors in his history or character.

Q. Did you proceed to examine him to answer those questions?

A. Yes, I did.

Q. And you've already testified I believe in the suppression hearing as to what tests and all were conducted and about what your examination of the defendant entailed. Following your examination, how did you respond to the issues that were given you?

A. I found that there was no evidence that Mr. Williams was incompetent by means of mental illness or mental deficiency to stand trial. Or in other words, it was my opinion that he understood clearly the nature of the proceedings that were being brought against him and in my opinion he possessed sufficient present ability to meaningly communicate with his attorney in an attempt to formulate a defense against the charges.

Q. You are telling us that you felt like he was competent to stand trial and assist in his own [512] defense?

A. Yes. With respect to his mental status at the time of the alleged offenses, I found no evidence that Mr. Williams did not understand the nature or quality of any acts that he may have performed by reason of mental illness or by reason of mental deficiency. And I found that there was no evidence that Mr. Williams was suffering from any irresistible impulse at the time of his alleged offenses.

Q. Did you feel like he could distinguish the difference between right and wrong at the time of these alleged offenses?

A. Yes. I felt that he was able to accurately assess the morality of any acts in which he may have engaged.

Q. And did you feel like he was – I guess this also goes back to the first question I asked you about competency to stand trial – but did you feel like he was competent back in the spring of this year to talk with the police about the offenses, and to sign waivers of rights forms and to make voluntary statements to the police?

[513] A. In my opinion there was no evidence of any emotional illness or mental deficiency that would impair his ability to give statements to the police or to waive any of his constitutional rights.

Q. All right. And you also examined him as far as mitigating factors are concerned. Is that correct?

A. Yes.

Q. And what was your professional conclusion following that aspect of your examination?

A. I was able to identify a couple of things that might be taken into consideration. One was that Mr. Williams pointed out that when he was charged with the armed robbery in 1976 he remembers taking the bullets from a weapon that was involved in that case in order to make sure that no one was injured during the offense. Another thing that Mr. Williams pointed out was that he felt that his 1982 conviction should not be considered as evidence of bad character on his part because he felt the conviction was unfair. And finally, although I didn't put it into my report as evidence in looking at this case, that had it not [514] been for Mr. Williams making statements, there would have been no charges to begin with. In other words, my understanding of the circumstances of the case lead me to believe that Mr. Williams could have escaped

without being charged with this offense at all had he said nothing.

Q. We don't normally split examinations, but I don't think there will be any objection.

MR. MOTLEY: Mr. Smitherman, is there anything you want to ask the doctor?

MR. SMITHERMAN: No.

MR. MOTLEY: That's all I have.

JUDGE INGRAM: Mr. Fuller, do you . . .

MR. FULLER: Yes, sir. I don't have any questions. I just want to say we are in the Judge's Chambers out of the presence of the jury. I would like to say that I don't know whether there will be any need for me to call the doctor back, but if it is, I would just like to ask, and I think we've agreed, that what he testified to this morning be stipulated and if there was any need for me to use [515] him for any reason we could just play back for the jury his testimony this morning.

MR. MOTLEY: That's fine with me. The only thing that I would anticipate that we would be needing him for if it does come down to having to put on evidence of aggravation and mitigation, I might like to get into the record and before the jury his discussion with Mr. Williams about perhaps taking the bullets from the gun that was involved in the robbery in 1976, and also Dr. Mansheim's attaching significance to the fact that he volunteered a lot of this information that was given to the police. That would be it.

CROSS EXAMINATION

By Mr. Fuller

Q. Well, of course, what he told you about taking the bullets out of the gun is strictly what he said, Dr. Mansheim?

A. That's right.

Q. You don't know yourself?

A. No.

[516] Q. And the 1982 offense that he's talking about, the breaking and entering and grand larceny, that's also what he told you?

A. Right.

Q. And the testimony you just gave about the statements, did he tell you that, or is that what I've told you about the statements or did he say anything at all to you about the statements?

A. No, he did not talk about the statement.

Q. Right. So that's basically information you gathered from others?

A. Yes.

Q. All right.

MR. FULLER: That's all I have. It's my understanding then that you feel like you can't release the doctor now?

MR. MOTLEY: Well. I don't know I feel like I could probably release him. I just, as I said, I wanted to

get on the record. There is not a lot that we have been able to draw from as far as an insanity defense or anything of that part or greatly significant mitigating [517] evidence as well.

MR. FULLER: Well, I think that's good because he was he was [sic] your own defendant and nobody could testify as to insanity.

MR. SMITHERMAN: I want to state for the record, Dr. Mansheim . . .

RE-DIRECT EXAMINATION

By Mr. Smitherman:

Q. You're saying that your observations as to his testimony, as to Mr. Williams' statements, are not . . . are assumptions and inferences drawn on by other information that you have been provided. Is that correct?

A. Yes, that's right.

Q. Not from Mr. Williams?

A. That's right.

Q. Okay, thank you.

JUDGE INGRAM: All right, is there anything else you want to ask the doctor?

MR. MOTLEY: All right, thank you, doctor.

DR. MANSHEIM: Thank you very much, Judge.

[518] JUDGE INGRAM: Do you want to excuse him?

MR. MOTLEY: I think probably we can, yes.

MR. FULLER: Maybe you'd better . . . Why don't you . . . Wait just a second and let me see.

MR. SMITHERMAN: The only thing is the, you know, statement about the bullets. I think he does put some emphasis on that, and I think that that would be somewhat important.

JUDGE INGRAM: Does he want to leave? Is that what the deal is?

MR. MOTLEY: Yes, he wants to get back.

MR. SMITHERMAN: All we do is put him on and ask him about that and that's it.

MR. MOTLEY: That would be it. That's an awful little to tie a man up for another day on.

MR. FULLER: Of course, he could say that himself, unless you don't want to put him on.

[519] MR. MOTLEY: We've already gone over that.

MR. FULLER: If he doesn't want to testify, then you would have to use the doctor.

MR. SMITHERMAN: Is there any way we could stipulate that the doctor said that?

MR. FULLER: Well, if that's what you want him for, why don't we get him back in here just for that purpose, let you ask him whatever you're going to ask him, and I'll cross examine him just on that point because we've had a little bit of conversation that we may not

want in, what we've just been saying. Have we been on the record the whole time?

JUDGE INGRAM: Yes. Yes, all of this is on the record.

MR. FULLER: So maybe we ought to get to a point where we can start all over and you can ask him what you want to get in if it comes to that, and I'll cross examine him and we will stipulate it. How's that?

MR. MOTLEY: That's fine.

[520] JUDGE INGRAM: All right, do you want to do this where we would play it for the jury?

MR. FULLER: Yes.

JUDGE INGRAM: All right, I will start out by putting him back under oath again and do that. All right, ask the doctor to come back in, please.

MR. SMITHERMAN: That's real important. Obviously it's admissible because Terry said it to the doctor and the doctor put some importance on that.

. . . .

DR. PAUL A. MANSHEIM, who had previously testified as a witness on behalf of the defendant, was recalled as a witness on behalf of the defendant, having been duly sworn, and testified as follows:

DIRECT EXAMINATION

By Mr. Motley:

Q. All right. Dr. Mansheim, just to get this into the record, you are Dr. Paul A. Mansheim, M.D.?

A. Yes.

Q. And you are engaged in the practice of psychiatry [521] in Tidewater, Virginia?

A. That's right.

Q. I believe it's already been stipulated that you are a forensic psychiatrist and . . .

MR. FULLER: If you want me to, Mr. Motley, I will stipulate his qualifications as a forensic psychiatrist.

MR. MOTLEY: All right, thank you.

MR. FULLER: If you want to go through them through, that's fine.

MR. MOTLEY: Well, I have his C.V. that we could maybe make an exhibit in the case if we had to.

MR. FULLER: That's all right with me too.

JUDGE INGRAM: All right.

Q. Dr. Mansheim, I believe pursuant to an order of this Court you examined Mr. Terry Williams the defendant. Is that right?

A. That's true.

Q. And as part of the examination I think you also examined him as to the possibility of factors in mitigation regarding these offenses. Is that correct?

[522] A. Yes, that's right.

Q. And what was the . . . Well, let me phrase the question this way: Did you have a discussion with Mr. Williams concerning this part of your examination?

A. Yes.

Q. And what were some of the things he told you about that you consider significant?

A. He said that when he was charged with an armed robbery in 1976 he took some bullets out of a gun that was used in order to make sure that no one was injured during that episode. And he felt that was significant because it was a way in which he had tried to act to make sure no one got hurt.

Q. You say he said he took the bullets out of the gun to make sure that no one would get hurt?

A. Yes.

Q. Did you have any discussion with anyone other than the defendant about that crime?

A. No.

Q. Did he volunteer this information to you?

A. Yes.

Q. Thank you. Dr. Mansheim I have no other question. There's just one other question, Dr. Mansheim, [523] excuse me. Was there an offense in 1982 that Mr. Williams discussed with you?

A. Yes, there was.

Q. Could you tell us about that?

A. Yes. Mr. Williams said that in 1982 he was arrested for breaking and entering and also for grand larceny stemming from the same incident. And with respect to the issue of mitigation, he said that he felt that he had been unfairly convicted because he was simply helping a friend move some furniture and he felt that that would be something that I should know about in the process of making an opinion about mitigating factors.

Q. He felt like there was a situation where he was wrongly convicted of that offense?

A. Right, and if people felt that he had been fairly convicted when he was wrongly convicted, then they might get the impression that his history was worse than it appears to him to be.

Q. Did he volunteer this information to you also?

A. Yes, he did.

Q. Thank you. I have no other questions.

JUDGE INGRAM: All right, Mr. Fuller?

[p 524] CROSS EXAMINATION

By Mr. Fuller:

Q. Dr. Mansheim, the only thing you know about his allegations that he took the bullets out of the pistol was what he told you?

A. That is correct.

Q. You haven't talked to the investigating officers or anyone involved in the case?

A. That is correct.

Q. And whether he did or did not take the bullets out of the pistol, you don't know of your own knowledge?

A. That is correct.

Q. All right, and this 1982 incident involving the burglary and grand larceny, did he tell you that he was caught while he was in this house, and that the owner of the house came and confronted him, and that he fought the owner?

A. He told me everything up to the point of fighting the owner.

Q. He didn't tell you about that?

A. No. I didn't know about that.

Q. And that they had all of the merchandise stacked up right at the front door, and when the owner came [525] in and asked them what they were doing, they tried to get away and he and the owner had a pretty long confrontation?

A. I know they had a discussion, that there was a misunderstanding, but I didn't know there was a physical fight.

Q. You didn't know that they fought out of the house, off of the front porch and out in the yard?

A. No, I didn't know that.

Q. All right, that's all.

RE-DIRECT EXAMINATION

By Mr. Motley:

Q. I have one or two more questions. Dr. Mansheim, did the defendant appear to be cooperative?

A. Yes.

Q. Did he seem to be sincere in what he was telling you?

A. Yes.

Q. I have no other questions.

JUDGE INGRAM: All right, gentlemen, is it agreeable to excuse the doctor?

MR. FULLER: Yes, sir, and we've agreed that if necessary to stipulate this testimony [526] before the jury.

JUDGE INGRAM: All right, Doctor, you may go. Thank you.

. . . .

With the Court, all counsel and the defendant present, the jury returned to the courtroom and gave its verdicts to the Deputy Clerk as follows:

> "We, the jury, find the accused, Terry Williams, guilty of capital murder of Harris Thomas Stone in the commission of robbery while armed with a deadly weapon as charged in the indictment. Signed, Russell L. Hines, Foreman."

DEPUTY CLERK: So say you all?

(To which they each responded in the affirmative.)

"We, the jury, find the accused, Terry Williams, guilty of robbery as charged in the indictment and fix his punishment at seven years in the penitentiary. Signed, Russell L. Hines, Foreman.

* * *

[PENALTY PHASE]

[530] MR. FULLER: First of all, if your Honor, please, I would like to introduce into evidence a certified attested copy of an armed robbery conviction of the defendant in Pittsylvania County on October 12th, 1976.

JUDGE INGRAM: Any objection to that.

Mr. Motley?

MR. MOTLEY: No, sir.

[531] JUDGE INGRAM: All right, that will be marked as Commonwealth's exhibit A.

. . . .

DONALD HOLLAND, the next witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name for the Court and jury, please?

A. Donald Holland.

Q. Mr. Holland, back on September the 7th of 1982 where were you living?

A. 1708 South Street.

Q. Do you still live there?

A. Well, off and on with my father.

Q. At that time both your mother and your father were living. Is that correct?

A. Yes.

Q. And on that particular day I believe your parents were in Philadelphia?

A. Well, they was on their way to Philadelphia.

Q. Visiting?

[532] A. Yeah, visiting.

Q. All right, and when you came home that night tell his Honor and the members of the jury what you found.

A. Well, when I got home I noticed that the front door was open and the lights were on in the house. And I thought maybe my brother was home. So as I opened the door and stepped inside the door I met two males, black males, coming out with stereo equipment and cameras that they had broken into the house and was taking out. They had ransacked the house and tore up a lot of stuff that was already in there. They had a lot of stuff sitting at the door that they were preparing to take out at the time. And as I walked in and I asked them what was they doing in the house and one of them asked me did I live there, and I told them, "Yeah." And the one that was behind him pushed one of them into me and swung at me, and he run around me and run out, and the other one

tried to run. And me and him we fought from the inside to the ourside [sic] to out in the street. And one of the neighbors [533] heard us out there and I told them to go call the police. And they went and called the police, and the police came and they arrested him.

Q. Which one was it that you fought and held onto until the police arrived?

A. The defendant, Terry Williams.

Q. The defendant right here?

A. Yes.

Q. And you testified in that case in this court in 1983 I believe?

A. Yes.

Q. And I believe entry was gained how?

A. In the back of the house there was an air conditioner setting in the window, and they had tore the air conditioner out and just about tore the whole window out getting in.

Q. All right, and what were some of the items that were stacked up in front of the door that they were getting ready to take out?

A. Well, there was stereo equipment, speakers, a camera, a portable cassette player and they had a couple of bags sitting there with change in it that my father had been saving up. And they had a lot of [534] other stuff in a box.

Q. And one got away but you captured the defendant after fighting with him from the front, inside the house, on the front porch and out in the yard?

A. Yes.

Q. Was it over two hundred dollars worth of goods that was stacked up there to be taken?

A. It was over two hundred dollars.

Q. Way over?

A. Yes.

Q. Answer counsel's questions.

CROSS EXAMINATION

By Mr. Motley:

Q. Were all your goods recovered?

A. No.

Q. What were you out of?

A. Well, my father had a gold ring (watch) that he had that the company had given him when he retired. We never got that back. And he had about maybe fifty dollars in coins, old coins, that he had saved up. We never got those back. My mother had an engagement ring that she had. She never got that back.

[535] Q. Things that were stacked up by the window though, you got those back?

A. Yeah, we got all of those back.

Q. You weren't injured in this incident?

A. No.

Q. No other questions.

RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. Mr. Holland, this watch that you were talking about was given to your father by which company?

A. P. Lorrilard.

Q. P. Lorrilard when he retired?

A. Yes.

Q. And what kind of value did he place on that watch?

A. Well, he placed a lot of value on it you know because would wear it sometimes and sometimes he just put it up and wouldn't wear it.

Q. Sentimental value?

A. Yes.

Q. He never got it back?

A. No.

Q. Your mother didn't get her wedding ring back?

A. No.

* * *

[541] By Mr. Fuller:

Q. Would you state your name, please?

A. Carolyn Gobble.

Q. Ms. Gobble, on the night of March the 5th, would you tell his Honor and the members of the jury what, if anything, you saw on West Green Street? And first of all, maybe you'd better tell us where West green Street is.

A. It's right off of Rison Street. You make a left.

Q. Rison Street comes down by where used to be old Stratford College?

A. Yes, sir.

Q. If you were to come down Rison Street from Main Street, which way would you turn?

A. You'd take a left on West Green.

Q. You'd go down behind old G.W.?

A. Yes, sir.

Q. Where the baseball field used to be?

A. Yes, sir.

Q. All right, and after you make that left how far do you go before you turn again?

A. You go about four or five car lengths and you make another turn, a sharp curve.

[542] Q. And what happened then?

A. I saw a body laying on the side of the road, and I just got a glimpse. So I turned my car around and pointed

my headlights toward the body so I could tell if it was somebody drunk, or hurt or what. And when I pulled up closer with high beams on I could see that the woman had been severely beaten. Her face was covered in blood and she was breathing like real hard. And so I left immediately and went to the EXXON service station to call for help.

Q. Who did you call?

A. I called 911 and whoever answered I told them they needed the Resque Squad and the police.

Q. Did the Rescue Squad and the police go there?

A. Yes, sir.

Q. Did you tell the police what you had seen?

A. No, sir. I drove back by there and the police were checking around then and they told me to go ahead on. I talked to a detective later that night about it.

Q. All right. So you did tell the detectives what you had seen?

[543] A. Yes, sir.

Q. All right, I want to show you Commonwealth exhibit number F and ask you if that exhibit reveals where you saw the body?

A. Yes, sir, right in here.

Q. Right in there where you are pointing?

A. Yes, sir.

Q. Right here?

A. Yes, sir.

Q. All right. I believe that's all I have right now. This place where you saw the body was in the city of Danville?

A. Yes, sir.

CROSS EXAMINATION

By Mr. Motley:

Q. Ms. Gobble. I believe you were driving through there with your boyfriend. Is that right?

A. Well, a friend of mine. I was going to drop him off on Holbrook.

Q. I see. And the woman was lying there by herself? No one was there with her?

A. No.

Q. Thank you. I have no other questions.

. . . .

[544] SERGEANT EARL WAYNE WILLIS, the next witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name to the Court and jury, please?

A. Sergeant Earl Wayne Willis, Danville Police Department.

Q. Sergeant Willis, on March the 5th would you tell us whether or not you received a call to go up on West Green Street around where the old George Washington High School used to be?

A. One of the officers that works with me did and I responded with him.

Q. What time did you get there?

A. Approximately 3:09 p.m.

Q. 3:09 p.m. When you went there what did you find?

A. I found an elderly lady laying on the edge of the road badly beaten.

Q. All right. And I want to show you this picture right here this is Commonwealth exhibit number E, would that picture show about where you saw the [545] lady?

A. Yes, sir. She was laying where you see a bunch of white particles laying on the ground. That's the debris left over from where the Life Saving Crew worked on her, where they would tear open a package and drop the paper right where the debris is.

Q. All right, this picture right here, this is Commonwealth exhibit number F. Does this picture illustrate where you saw the lady?

A. Yes, sir, the same debris here on the left side.

Q. All right, now this picture right here is Commonwealth exhibit number D. What does that illustrate?

A. Among all this trash is a dark red spot. That appears to be where her head was laying, right beside it. There was blood, she had lost a lot of blood out of her nose and mouth.

Q. All right, what was her condition when you arrived there?

A. She was unconscious. There was a tremendous amount of blood coming out of her mouth and nose, and when she would breath she was blowing bubbles through the blood.

[546] Q. Does this picture right here, Commonwealth exhibit number C, illustrate the way her face looked?

A. Yes, sir, it does.

Q. All right, and what, if anything did you notice about her clothing?

A. She was laying flat on her back, her legs spread slightly, her feet about eighteen inches apart and her dress, or skirt, the bottom part of it was pulled up where it just covered the top of her pubic hair. Her right shoe was off, laying a few inches from her foot. Her left shoe was on, and around her left ankle was a pair of very dirty pair of men's jockey shorts. It appeared to be what she had been wearing. They were still wrapped up around her ankles.

Q. Around her. . . .

A. Left ankle.

Q. . . . left ankle. She didn't have any pants on and her dress was up to her pubic hair?

A. Yes, sir.

Q. What did you do?

A. I called for the Life Saving Crew.

Q. Did you stay there until the Life Saving Crew [547] transported her?

A. Yes, sir.

Q. All right, answer counsel's questions.

MR. MOTLEY: I have no questions.

. . . .

OFFICER STAN LORTON, the next witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMIANTION

By Mr. Fuller:

Q. Would you state your name to the Court and jury, please?

A. Stan Lorton.

Q. You are a police officer. Is that correct?

A. Yes, sir.

Q. Officer Lorton did you receive a call to go to West Green Street at around 8:09 on the night of March the 5th of this year?

A. Yes, I did.

Q. What did you find when you arrived there?

A. Sergeant Willis was dispatched. He arrived first. I arrived about forty-five seconds to a minute later. I observed a black female, elderly, laying [548] on the side of the road.

Q. All right, and what was her condition?

A. When I approached her I noticed that she was very badly swollen in the face and to me to be disfigured and there was a lot of blood.

Q. Did you stay there until the Life Saving Crew arrived?

A. I stayed there for a short period of time. I called in, and I thought the woman had been raped at first. Then I went and assisted with the traffic.

Q. Why did you think that?

A. Because of her panties were down, pulled down below her legs and her skirt was raised up.

Q. That's all I have.

CROSS EXAMINATION

By Mr. Motley:

Q. Did it turn out subsequently that she had not been raped or sexually assaulted?

A. I don't know.

Q. No other questions.

. . . .

DR. CHARLES A. WHITTEN, the next witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

[549] DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name to the Court and jury, please?

A. Charles a Whitten.

Q. You are a neuro surgeon. Is that correct?

A. Yes, sir.

MR. FULLER: Will you stipulate his qualifications?

MR. MOTLEY: Yes, sir.

JUDGE INGRAM: All right.

Q. Dr. Whitten, did you have an occasion to treat an Alberta Stroud?

A. Yes.

Q. When did you first see her?

A. March of '86.

Q. And do you know what day it was?

A. I think it was about the 6th, I'm not sure. The 5th.

Q. The 5th. All right. And what was her condition when you received her?

A. I saw her in the emergency room initially, and she was brought in unconscious, and multiple injuries, bruising of her face, facial fractures and obvious [550] brain injury, and not moving the left side of her body, in shock and Dr. Sprinkle, a general surgeon, saw her then. She had intraabdominal bleeding from a perforated viscus. He took her to surgery.

Q. Where were her injuries noticeably?

A. Brain.

Q. Brain?

A. She had severe head injuries, particularly the right side of her face where she had a lot of fractures.

Q. How about her stomach area?

A. And her abdomen, yes, sir.

Q. And that's where surgery was performed by Dr. Sprinkle.

A. Yes, sir.

Q. Was there anything you could do surgically?

A. No, sir.

Q. Is there anything that can be done now?

A. No, sir.

Q. What is her condition now?

A. I haven't seen her, but I understand she's in a nursing home and she's still vegetating.

Q. She's just a vegetable?

A. Yes, sir.

Q. Is there any hope for a better prognosis?

[551] A. Not much at this . . .

MR. MOTLEY: Your Honor, if he hasn't examined her and all, I don't see how he's able to give a prognosis.

JUDGE INGRAM: All right.

MR. FULLER: All right, I'll withdraw that.

Q. But she had brain damage?

A. Yes, sir.

Q. And it's not reversible. Is that correct?

A. No, sir.

Q. That's all I have.

CROSS EXAMINATION

By Mr. Motley:

Q. Dr. Whitten, when did you say the last time was than you examined her?

A. When she was at the hospital.

Q. Do you know approximately?

A. Several weeks after she entered.

Q. Do you know approximately when that was?

A. I assume it was around May or April.

Q. You have not seen her since that time?

A. No, sir.

Q. Thank you. I have no other questions.

* * *

[554] A. I am T. A. Brown, Detective, Danville, Virginia Police Department.

Q. Detective Brown, on April the 25th of this year Police Chief Neal Morris turned over to you an anonymous letter delivered to him from the jail. Is that correct?

A. Yes, sir.

Q. Pursuant to that letter I believe you and Detective Evans testified that you started looking at I block to determine who was in I block. Is that correct?

A. Yes, sir.

Q. First of all let me show you the letter that you received.

MR. FULLER: You've seen this letter?

MR. MOTLEY: Yes, sir.

Q. Is this the letter you received from the police chief?

A. Yes, sir, it is.

Q. Would you read that letter, please?

A. "Dear sir, I can't write or spell too good, so bare [sic] with me. I know what I am saying and what I am doing, what I am going to do. I called [555] Captain Doss back in February of this year one night about 2:25 p.m. and told him about that man down on Henry Street. I said that I might have known what happened to him but I didn't leave my name. Well, I kill him myself. All them cars someone went in while those people were at work. I went in those cars, mills, hotels, on the street just about all over Danville. And also that lady on West Green Street. I did it, but I am very sorry I did. I just can't hold all this inside of me. It's getting to the point that I don't know who I am anymore. I will only talk to you, please. I cell, city jail."

MR. FULLER: I would like to introduce this into evidence if your Honor, please.

JUDGE INGRAM: All right that will be Commonwealth exhibit G.

Q. This ink on the letter was put there by the police department. Is that correct?

A. Yes, sir. That's ninhydrim, a chemical, a chemical used to raise fingerprints.

Q. Before you knew who it was from you dusted it for fingerprints?

[556] A. Yes, sir.

Q. All right, now pursuant to this letter that was put in the hands of the police chief, you and Detective Evans talked to the defendant. Is that correct?

A. Yes, sir.

Q. You picked him out first?

A. Yes, sir.

Q. All right, now you confronted him with this anonymous letter that has been introduced into evidence. Is that correct?

A. That's correct, sir.

Q. He first denied writing it but then after taking about thirty seconds, asking you-all to leave, he called you back in and admitted writing it?

A. Yes, sir.

Q. He had been advised of his constitutional rights?

A. Yes, sir.

Q. And that advice of rights has been introduced into evidence. Is that correct?

A. Yes, sir.

Q. He then gave you a statement. Is that correct?

A. Yes, sir.

Q. More than one statement?

[557] A. Yes, sir.

Q. And one statement which was taken at 5:58 p.m. involved this malicious wounding. Is that correct?

A. Yes, sir.

Q. All right.

MR. MOTLEY: Your Honor, we would again for the record renew the objection we made earlier concerning statements.

JUDGE INGRAM: All right. That objection will be overruled for reasons previously stated. The Court will note your exception to the Court's ruling.

MR. MOTLEY: Your Honor, I would also note just to save time and aggravation that my objection is continuing.

JUDGE INGRAM: All right.

MR. FULLER: All right, the Court has already ruled. I believe that Court ruled on this last Wednesday. And we'll make that a part of the record in this case.

JUDGE INGRAM: All right, we'll make the Court rulings in that case, the [558] reasons stated that it's admissible here at this time.

MR. MOTLEY: Your Honor, again, the same objection, the same grounds that I've had all along. So it's not really new grounds or anything the Commonwealth or the Court is not familiar with.

JUDGE INGRAM: All right.

Q. All right, Detective Brown, on the afternoon of April 25th when the defendant gave you a statement concerning Harris Thomas Stone, which we've previously tried today, he also gave you a statement in regard to Alberta Stroud. Is that correct?

A. Yes, sir.

Q. He had been advised of his constitutional rights?

A. Yes, sir.

Q. And he waived his constitutional rights?

A. Yes, sir.

Q. That waiver was the same waiver that he was given in regard to the Harris Thomas Stone case?

A. Yes, sir.

Q. And then he gave you a series of statements?

A. Yes, sir.

[559] Q. Is that one of the statements you have before you?

A. Yes, sir, it is.

Q. In regard to Alberta Stroud?

A. Yes, sir.

Q. Would you read that for the jury, please?

A. "My name is Terry Williams. I am thirty-one years old. I have a seventh grade education. I have been advised of my rights and I have signed a waiver of my rights. I make the following statement of my own free will with no threats or promises having been made to me. I don't remember the date, but one evening I was walking up Main Street. I had gone by the bus station walking up Main Street. As I was walking I met up with a lady. She asked me where Pine or Paxton Street was at. I told her that I would show her. As we was walking up Main Street she told me about someone had robbed her. She said that someone came to her house and took her money from under her mattress. She said it was all the money that she

had. When we got to Holbrook Avenue we took a left on Holbrook Avenue. We walked down Holbrook Avenue and then we got to West Green Street. We [560] took a right onto West Green Street and we started walking down it. As we walked down West Green Street, we had turned the first corner, and she said something about this being the wrong way. I thought that she then said something bad or cursed me. Then I just knocked her down with my hand. When she was down I started hitting her and kicking her over and over again. I then pulled her dress up and pulled her panties down. I then started hitting on her again. She kept saying, "Stop. Please stop." Something came over me and I realized what I was doing. I then noticed I had blood on me. I had blood on my shoes, my pants legs and on my hands. She was bleeding from her face. I then left her there and I started walking. I walked all the way up to the Schoolfield mill. I then realized where I was at and I said, "I'd better go on home." I then walked home, which is on Henry Street. The next morning I heard the news on the radio about the lady. I then saw the blood on me and I said, "What have I done?" I though it was all a bad dream until I realized the blood was on me. Last night I wrote a letter [561] to the chief of police about what I had done. I wanted to get it out as to what I had done and get some help for me. Detective T. A. Brown has read this statement back to me and it's true and correct to the best of my knowledge. Signed, Terry Williams."

MR. FULLER: I would like to introduce this statement into evidence if your Honor, please.

JUDGE INGRAM: All right, it will be marked as Commonwealth's exhibit H.

Q. Now that was on Friday, April 25th. Is that correct?

A. Yes, sir.

Q. On April 28th you weren't present when the defendant called Detective Evans and gave another statement. Is that correct?

A. Yes, sir.

Q. And in that April 28th statement he retracted the statements he had given on April 25th. Is that correct?

A. Yes, sir.

Q. He said it was dream?

A. Yes, sir.

[562] MR. MOTLEY: Your Honor, I'm going to object to the line of leading questions.

MR. FULLER: Well, they are leading, but if he doesn't want that in, that's all right with me. I'll stop right there. I just want to be fair about it. That's all I have.

CROSS EXAMINATION

By Mr. Motley:

Q. Detective Brown, as far as the statements he gave you, these were voluntary on his part weren't they?

A. Yes, sir.

Q. And I believe he indicated that he felt like he had lost control of himself or he wanted some help. Is that also correct?

A. Yes, sir.

Q. What was your reaction to his indication that he said he wanted to talk or get it into the open?

A. He stated that it was bothering him, he needed to get it off his chest, his conscience was bothering him and he wanted to talk about it.

Q. He cooperated with you fully?

[563] A. Yes, sir.

Q. Now it's already in evidence that he took back some of these things that he said first in these cases, but he later, a few days later, came in and again confessed to these matters. Is that correct?

A. Yes, sir.

Q. I think you had been away one day, and you came back and you and Detective Evans sat down with him and he again said that he had done these things, such as Mr. Stone's death on Henry Street and Mrs. Stroud's assault up on West Green Street. Is that right?

A. Yes, sir.

Q. And I think he also told you about two automobile thefts that he had been involved in?

A. Yes, sir.

Q. And it was your impression that he wanted to get this into the open, clear the air and get it off his conscience?

A. Yes, sir.

Q. On any of these charges would the detective department have known anything much to go on had it not been for these statements?

[564] A. Do you mean in regard to Mr. Williams?

Q. That's right, from regard to solving the crimes?

A. No, sir, not concerning Mr. Williams.

Q. In fact, you-all really didn't have a good solid lead on any of these things until Mr. Williams wrote Chief Morris and then came forward and started making these statements. Isn't that correct?

A. Yes, sir.

Q. And that includes both the case involving Mr. Stone and the case involving Mrs. Stroud. Is that right?

A. Yes, sir, because we wasn't investigating Mr. Stone at all.

Q. Right. Mr. Stone had pretty much been a closed case?

A. Yes, sir.

Q. And then he came forward and told you about that, and also about Mrs. Stroud and about two automobiles?

A. Yes, sir.

Q. In fact you had to go get out all of the old automobile theft files just to see what he was talking about. Isn't that right?

A. Yes, sir.

Q. No other questions.

[565] RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. Detective, do you have a taped conversation in regard to this?

A. Yes, sir.

Q. Do you have it with you?

A. I have the transcript of it.

Q. Do you have the tape?

A. Not on me.

Q. I have it . . . It's already been introduced.

A. Yes, sir.

Q. Will you play that tape?

The taped interview of Terry Williams being questioned by Detective T. A. Brown in the presence of Detective C. D. Evans, was then played for the Court and jury, which was as follows:

Examination of Terry Williams by Detective T. A. Brown:

Q. "This is Detective T. A. Brown and Detective C. D. Evans. Present with me is Terry Williams, who has indicated he is thirty-one years of age, and today's date is April the 25th, 1986. The time is 4:35 p.m. Mr. Williams was advised of his rights and he signed a waiver of his

rights. At this time, [566] Mr. Williams, would you please state your name?

A. Terry Williams.

Q. And how old are you, Mr. Williams?

A. Thirty-one.

Q. And you have been advised of your rights?

A. Yes.

Q. And you understood what your rights were?

A. Yes.

Q. You signed a waiver of your rights?

A. Yes.

Q. Now we have talked to you concerning a female that was beat up on East Green Street.

DETECTIVE EVANS: West Green Street.

A. West Green Street. Would you in your own words tell us what happened on that evening, and approximately when it was, and where you first met the lady at and what transpired after that?

A. Well, I was walking up Main Street, and I walked, walked into this lady. She told me that she had been robbed. And she wanted to know where Pine Street was and I told her I would walk with her up there. We walked up Main Street all the way up to Holbrook and I told her to go down Holbrook Street. And we [567] went up Holbrook Street, and its a little ol' short off alley. They call it West Green Street. We walked down there. When

we got to the bottom of the hill, I don't know, just, she said something, is this the wrong way, or something, and I thought she said something bad and I knocked her down.

Q. What did you knock her down with?

A. With my hand.

Q. Okay, go ahead.

A. I knocked her down, and I hit her, and kicked her, and hit her, and kicked her, and hit her and kicked her, and I pulled up her dress, and pulled her panties down, and I kicked her and she was saying, 'Stop, please stop.' And just, I just couldn't stop. I just hit her, and kicked her, and then look like something just went over me and I tried to realize what I was doing, and by that time she was just laying there. I got scared and I just left.

Q. All right, when you left, was there anything on your clothes or anything from her?

A. It was, it was some, her blood that was coming off her face was on my pants, and on my shoes and on my [568] hands.

Q. What was the purpose for your pulling her panties down?

A. I don't know, I, I don't know. I just though I was somebody else, I don't know.

Q. Did you have any type of sex with her?

A. No, not that I recall.

Examination of Terry Williams By Detective C. D. Evans:

Q. Did you know this lady, Terry, did you know her name?

A. No, that's – that was the first time I ever seen her.

Q. All right, approximately what time did you meet her on Main Street? You was walking. Tell me how you met up with her.

A. I was coming up there, she was standing on the corner. She was walking towards, up Main Street, I don't know. It won't all that late. It was kind of early, maybe seven, seven-thirty or eight o'clock.

Q. Was you drinking?

A. No.

Q. You hadn't had anything to drink?

A. No.

Q. Okay. I understand that you said something come [569] over you?

A. Yes.

Q. You don't know what it was?

A. No.

Q. And after you left her there in the alley, where did you go?

A. I walked, and I walked up 'til I, 'til I realized I was up at Schoolfield mill. And then I caught a'hold of myself and I went home.

Q. The next morning you woke up . . .

A. I woke up and went downstairs, and my mother had the radio on and I heard about this lady being beat and my mother was in the kitchen and I looked down and I had some blood in my fingernails. I said, 'God, man, what I done did?' And I went upstairs and I looked at my pants that I had on, and they had blood all on them.

Q. Terry, did you take anything from that lady that day, that night?

A. Nawh, I didn't, I didn't take anything 'cause she didn't have anything, no pocketbook or nothing.

DETECTIVE BROWN: Well, did she say anything regarding what she told you about [570] being robbed?

MR. WILLIAMS: Well, she said somebody had ran in . . . ran in her house, and went up under her mattress and took her money, took all her money, that was what she said.

Q. And today, this letter that we showed you, did you write that letter?

A. Yes.

Q. And you . . . When did you write it?

A. I wrote it last night around one, maybe one thirty or two o'clock 'cause, you know, ever since it heppened [sic] I won't be able to sleep 'cause it's been on my mind and I just wanted to get it off my chest, and I knew it was wrong and now I'm very sorry I did it.

Q. So on you own free will you wanted to tell us what happened?

A. Yes, on my own free will.

DETECTIVE BROWN: Is there anything else about this lady that you need to tell us?

MR. WILLIAMS: No.

Q. Terry, that photo that I showed you of the scene [571] where the lady was found, which there is nobody in the scene, you saw the photo. Am I correct?

A. Yes.

Q. And you pointed out to me where you left the lady lying. Correct?

A. Yes.

Q. And that's right?

A. Yes.

Q. Okay.

DETECTIVE BROWN: This ends the conversation with Terry Williams with Detective T. A. Brown and Detective C. D. Evans. The time is 4:42 p.m. The date is April 25th, 1986."

MR. FULLER: Your Honor, I would like to introduce that tape into the evidence.

JUDGE INGRAM: All right, that will be marked as Commonwealth's exhibit I.

MR. FULLER: I would also like to introduce a copy of the tape that was transcribed.

JUDGE INGRAM: That will be Commonwealth's exhibit J.

Q. That's all I have right now.

[572] JUDGE INGRAM: All right, any other questions?

MR. MOTLEY: Yes, sir.

RE-DIRECT EXAMINATION

By Mr. Motley:

Q. I believe you asked Terry Williams on the tape if the woman had been raped, and he said, "No." Is that right?

A. I asked him if he had any sex, and he said, "No."

Q. Right. And it again was he who initiated the conversation with you about this?

A. Yes, sir.

Q. No other questions.

. . . .

EUGENIA STAMPS, the next witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name to the Court and jury, please?

A. Sir?

Q. Would you tell the Court and jury your name?

A. Eugenia Stamps.

Q. Mr. Stamps, you know Alberta Stroud don't you?

[573] A. Yes, sir, I know her.

Q. She was your friend. Right?

A. Yes, sir. Just a patriotic friend, not a . . .

Q. Right.

A. I got different kind(s) of friend.

Q. Okay, Mr. Stamps.

I been knowing Alberta for about thirty-five or forty years I guess.

Q. Well, Mr. . . .

A. I never got close to her until the last ten years I guess.

Q. Okay, Mr. Stamps, when was the last time you saw her on the night of March the 5th, about what time?

A. It was about 7:35.

Q. And where did you see her, Mr. Stamps?

A. I saw her on Jefferson Street.

Q. On Jefferson Street?

A. Yeah.

Q. And what . . . Did she tell you what had happened to her that day?

A. Yeah, she told me somebody had took her money.

Q. Took her money?

A. Uh-huh.

[574] Q. Okay, and you saw her on Jefferson Street about 7:30?

A. Yeah, just about 7:30.

Q. All right, and where was she going after that? Where did you see her last?

A. I saw her on Jefferson. She was just coming out of her apartment.

Q. She lived on Jefferson?

A. Uh-huh. And I walked down about thirty or forty feet down, and I looked over across the street and I saw her standing across the street. Then I gave her those capsules called Time Release. Twelve Hour Time Release tablets, you know that I had.

Q. You had bought her some cold tablets?

A. Yeah.

Q. Had a mellow yellow?

A. Yeah, that's right. Yeah.

Q. Had a mellow yellow?

A. Yeah.

Q. Okay, which direction was she going in when you last saw her?

A. When I last saw her she was headed towards up to [575] Holbrook Street, Main Street. She went up Mail Street.

Q. She was on Main Street going up towards Holbrook?

A. Uh-huh, yeah. Uh-huh.

Q. That's the last time you saw her?

A. The last time I saw her?

Q. And that was about what time?

A. That was about 7:30 . . .

Q. 7:30?

A. . . . or 7:35.

Q. Did you ever see her after that?

A. I never did see her any more after that. She said, "When I come back I will call you."

Q. But she didn't call?

A. No.

Q. That's all I have, Mr. Stamps.

CROSS EXAMINATION

By Mr. Morley:

Q. Mr. Stamps, you said you had been good friends with Ms. Stroud for a number of years?

A. Right.

Q. How old was she?

A. Sir?

[576] Q. How old was Ms. Stroud?

A. How long?

Q. Sir?

A. I beg your pardon. I didn't understand you.

Q. How old was Alberta Stroud?

A. Well, how old was she? I really don't know. She said she was around seventy, or seventy-five or seventy-six, something like that.

Q. Do you know she was younger than you were?

A. I don't know that. I'm seventy-five. I don't know nothing about her age. I [sic] never around her a lot. I didn't live with her you know I didn't know about her age.

Q. All right, thank you. No other questions.

MR. FULLER: Thank you, Mr. Stamps. That's all we have for you.

. . . .

DR. LAMONT PERRY, the next witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name for the Court and jury, [577] please?

A. Dr. Lamont Perry.

Q. Dr. Perry, what is your specialty?

A. Family practice.

Q. All right, and have you had occasion to have Alberta Stroud under your care?

A. She's currently a patient of mine.

Q. Alright, and when did she become a patient of yours?

A. In April of this year.

Q. And who referred her to you?

A, Dr. Sprinkle.

Q. All right.

MR. FULLER: Is there any question about Dr. Perry's qualifications?

MR. MOTLEY: Not at all. I'll stipulate them.

MR. FULLER: All right.

Q. Dr. Perry, what was her condition when she came under your care?

A. Basically the patient was in a – using layman's terms – in a vegetative state. That is she was being fed by

tube, could not speak and could not [578] perform any of her normally valid functions.

Q. All right, and what did you do for her?

A. It's basically custodial care that I'm providing the patient right now. She's residing in the nursing home at Roman Eagle. And she's being fed by tube. She has catheter drainage of her bladder. She gets skin care and basic nursing functions.

Q. What is the . . . Is there any hope for a better prognosis?

A. No. As a matter of fact, the prognosis is poor.

Q. And she's just in a vegetative stage. Is that correct?

A. A vegetative stage. Exactly.

Q. And there doesn't appear to be any hope that she [sic] ever get any better?

A. No.

MR. MOTLEY: No questions.

MR. FULLER: Thank you, Dr. Perry.

. . . .

MR. FULLER: I'll just wait until we take a break to get the tape together of Dr. Sprinkle.

. . . .

[579] DETECTIVE C. D. EVANS, who had previously been called as a witness on behalf of the Commonwealth, was recalled as a witness on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. State your name for the Court and jury, please?

A. Detective C. D. Evans.

Q. Detective Evans, were you with Detective Brown on April 25th when the police chief turned over to you an anonymous letter?

A. Yes, sir, I was.

Q. And you went to cell block I and found that there were how many people in there?

A. Four.

Q. And which one did you decide to talk to?

A. Terry Williams.

Q. Why Terry Williams?

A. Because I knew Terry in the past.

Q. All right, and what in the past was it that caused you to talk to Terry?

A. Back on December the 4th of 1985 I went to an address [580] on Keen Street, the residence of Mr. Soloman. There had been a fire in that house and Mr. Soloman had gone to the emergency room, the hospital. I went up there and he had a small cut in his side. And he stated he was missing some money. At that time I interviewed Terry Williams.

Q. All right. So based upon your conversation there you decided to talk to Terry Williams first?

A. Yes, sir.

Q. Did he give a statement on the 25th in regard to the malicious wounding of Alberta Stroud?

A. Yes, sir, he did.

Q. After having been advised of his constitutional rights?

A. Yes, sir.

Q. All right, and then on April the 28th were you working?

A. Yes, sir. I was.

Q. Did you have an occasion to talk to the defendant, Terry Williams, again?

A. Yes, sir.

Q. Were you going to talk to him anyway?

A. Yes, sir.

[581] Q. And why, did he want to talk to you?

A. Yes, sir, he did.

Q. All right, and at that time could you tell us whether or not he wanted to give another statement?

A. Yes, sir, he did.

Q. Before doing so, did you advise him of his constitutional rights?

A. Yes, sir, I did.

Q. And did he sign a waiver of his constitutional rights?

A. Yes, sir.

MR. FULLER: That's already been introduced in this case.

JUDGE INGRAM: Right. All of these waivers were previously admitted in the case in chief.

Q. Then did he give you another statement?

A. Yes, sir, he did.

Q. Read that other statement if you will.

A. "My name is Terry Williams. I am thirty-one years old and I have a seventh grade education. Detective Evans has advised me of my rights, and I have read them along with him. I understand my rights and I have signed a waiver that I understand my [582] rights. I give the following statement to Detective Evans of my free will with no threats or promises made to me. On Friday, April 25th, 1986, I gave some statements to Detective Evans and Brown telling them about some crimes that I committed. I called my mother on Saturday, the next day, and asked her about any blood that I had on my clothes. I had mentioned to the detectives that I had found blood on my clothes and hands the next morning after the lady was beaten by me. My mother said that my clothes did not have any blood on them. I told my mother that I had talked to the police. She told me that I needed to see a psychiatrist. I had nightmares and that is the reason that I told the police about the crimes. I dreamed all the crimes that I told the detectives about. I did not do them. I've also talked to my brothers on the phone. They said that I did not kill the man on Henry Street and take his wallet. They said that he died of natural causes and that he still

had his wallet. Today, Monday, April 28th, 1986, Detective Evans picked me up and I told him that I [583] had nightmares, that I had told him that Holbrook Street was where me and the lady walked. But that is not right. I showed Detective Evans where I first saw the lady that night, and I pointed to the front of Main Street Methodist Church. We walked up Main Street and passed Holbrook Street. I showed Detective Evans where I walked to with the lady, and it was Park Avenue Extension behind the Schoolfield Recreation Center. This is where I beat the lady up in my dreams. All the crimes I admitted to were dreams. I have read and Detective Evans has read me back the above statement and it is true and correct. Signed, Terry Williams."

Q. All right, now Detective Evans, . . .

MR. FULLER: I would like to introduce this statement into the evidence, if your Honor, please.

JUDGE INGRAM: All right, that will be Commonwealth exhibit K.

Q. . . . did the defendant point out to you on any of these pictures where before he gave this statement retracting it, where the lady was that [584] he first told you on April 25th that he beat?

A. Yes, sir.

Q. Where was it?

A. He pointed right here, and that was where Ms. Stroud was found.

Q. He pointed out right where she was found?

A. Yes, sir.

Q. Then on April 28th he retracted that and said it happened up around the Schoolfield Y?

A. Yes, sir.

Q. In his dream?

A. In his dream.

Q. On May the 2nd did you and Detective Brown have an occasion to talk to the defendant again after having advised him of his constitutional rights?

A. Yes, sir, we did.

Q. Did he at that time indicate which of the statements was true?

A. Yes, sir, he stated the true statement he gave us Friday was true.

Q. On what date?

A. April the 25th.

Q. The 25th?

[585] A. Yes, sir.

Q. That that statement was true?

A. Yes, sir.

Q. Why did he say he made the retraction?

A. Because he had talked to his mother and brothers over the weekend, and they told him he had been having dreams and nightmares.

Q. But he said the April 25th statement was true?

A. Yes, sir.

MR. FULLER: If your Honor, please, I would like to introduce into the evidence the conviction of the defendant for malicious wounding on Wednesday of last week.

MUDGE INGRAM: All right. That's an order of this Court. That will be marked as Commonwealth's exhibit L.

MR. FULLER: This is the conviction for the malicious wounding of Alberta Stroud.

Q. Now, Detective Evans, in regard to the Soloman situation, when you were interviewing him on April 25th after having advised the defendant of [586] his constitutional rights, did he say anything about that incident?

A. Yes, sir, he did.

Q. Did he give you a statement?

A. Yes, sir.

Q. Do you have that statement?

A. Yes, sir.

All counsel approached the bench, and following a conference with the Court, which was out of the hearing of the jury and not made a part of the record, the following occurred:

MR. SMITHERMAN: Judge, your Honor, could we request the jury to step out for a minute?

JUDGE INGRAM: All right, take the jury out.

The jury then retired to the jury room, and with the Court, all counsel and the defendant remaining in the courtroom, there was a conference between the Court and counsel, which was not made a part of the record, after which the following occurred:

MR. SMITHERMAN: Your Honor, we would note . . .

MR. MOTLEY: Just note our exception.

* * *

[588] Q. Detective Evans, did you take a statement from the defendant in regard to the incident at Mr. Soloman's house?

A. Yes, sir, I did.

Q. Was that statement taken after he had been advised of his constitutional rights?

A. Yes, sir.

Q. And was he advised. . . . This was on April 25th. Is that correct?

A. Yes, sir.

Q. I'll show you this waiver of the defendant's constitutional rights, which is commonwealth's exhibit number six. Is this the waiver of his rights that you read him?

[589] A. Yes, sir.

Q. And is this the waiver of the rights that he signed on April 25th?

A. Yes, sir, it is.

Q. And then he gave you a statement involving the death of Harris Thomas Stone, the malicious wounding of Alberta Stroud and then this statement that you are about to read. Is that correct?

A. That's correct, sir.

Q. That was all after he had been advised of his constitutional rights, which is represented by Commonwealth's exhibit number six. Is that correct?

A. Yes, sir.

Q. All right, would you read that statement?

A. "My name is Terry Williams. I am thirty-one years old and I have a seventh grade education. I have been advised of my rights and I understand my rights. I have signed a waiver that I understand my rights. I make the following statement to Detective Evans and Brown of my own free will with no threats or promises made to me. I don't remember the date, but it was about 3:30 a.m. [590] when I was walking home from the south end of town. I was feeling depressed and did not have any money. I noticed behind my house that Mr. Soloman was home. Mr. Soloman is an old man that has an apartment behind my house. I went up the steps to Mr. Soloman's apartment and the porch door was open. The door that leads into Mr. Soloman's apartment was locked. I heard Mr. Soloman in there and he was coughing. I saw some clothes hanging on some clothes racks on the porch, and I got a match and lit a fire on the clothes and put them next to the door. I went back down the steps and waited for the flames to get higher and then I came back to the

porch. Mr. Soloman was opening the door trying to put out the fire. I helped him put the fire out. Mr. Soloman was bending over and I went in the kitchen and got a small steak knife. Mr. Soloman had handed me a pail and wanted me to get some water in it. While I was in the kitchen I got the knife. I hit Mr. Soloman in the side one time with the knife. Mr. Solomam fell over, and I reached in his front pocket and got two [591] twenties, two fives and two ones. I made sure the fire was out and then I went to the Quick-Check on Worsham Street and called the 911 number to report the fire. I then went back to the scene to make sure that Mr. Soloman was all right. The same morning the police picked me up and talked to me, but I did not tell them the truth. Something wanted me to tell the truth, and something didn't. Detective Evans read me back this statement and it is true and correct. Signed, Terry Williams."

MR. FULLER: I would like to introduce this statement into evidence, if your Honor, please. That has been marked I think.

JUDGE INGRAM: All right, that's Commonwealth's exhibit L.

MR. FULLER: Okay.

Q. All right, now, Detective Evans, going back to the Alberta Stroud case, do you know how old she was?

A. Alberta was in her late seventies I think.

Q. Late seventies?

A. Yes, sir.

[392] Q. All right. That's all I have right now.

CROSS EXAMINATION

By Mr. Motley:

MR. MOTLEY: May I see the statement?

Q. Detective Evans, . . .

A. Yes, sir.

Q. . . . this was one of several statements that Terry Williams gave you on April the 25th. Is that right?

A. That's right, sir.

Q. You-all had talked with him that afternoon about the . . . about Mr. Stone over on Henry Street, about Ms. Stroud?

A. Yes, sir.

Q. And two other things?

A. Yes, sir.

Q. These two cars. And also Mr. Soloman?

A. Yes, sir.

Q. Now I think this statement contains a statement by Terry Williams that he said that he started this fire, then he made sure the fire was out and he called the fire department. Is that right?

A. That's right.

Q. And he also indicates in here that he went back to [593] the scene and made sure that Mr. Soloman was all right?

A. Yes, sir.

Q. This was after he said that he admitted to hitting him and taking his money?

A. That's right.

Q. And I think he also said – Mr. Williams said – "Something wanted me to tell the truth and something didn't."?

A. That's right, sir.

Q. Did he appear to want to be truthful when he gave you this statement?

A. Yes, sir, he appeared to be.

Q. Did he say anything about wanting to clear his conscience, get it out of his system?

A. Yes, sir.

Q. As I read the statement it seems like it was some kind of debate in him whether to tell the truth or not to tell the truth and he decided to tell the truth?

A. Yes, sir.

Q. And he was cooperative when he gave you that statement?

[594] A. Yes, sir.

Q. Thank you. I have no other questions.

MR. FULLER: You may step down.

. . . .

DETECTIVE T. A. BROWN, who had previously testified as a witness on behalf of the Commonwealth, was

recalled as a witness on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. You are detective, Tom Brown. Is that correct?

A. Yes, sir.

Q. Detective Brown, do you have a tape recording of a statement that the defendant gave in regard to Mr. Soloman?

A. Yes, sir.

Q. And was he advised of his constitutional rights before he gave the statement?

A. Yes, sir, he was.

Q. Was this statement pursuant to his being advised of his constitutional rights on April the 25th?

A. Yes, sir.

Q. And he gave you a series of statements, and this was [595] one of them?

A. Yes, sir.

Q. Do you have the tape?

A. Yes, sir.

Q. Would you play it, please?

The following is the taped interview of Terry Williams by Detective T. A. Brown in the presence of Detective C. D. Evans:

"This is Detective T. A. Brown. Present is Detective C. D. Evans and present also is Mr. Terry Williams.

Q. Mr. Williams, will you state you name, please?

A. Terry Williams.

Q. And your age?

A. Thirty-one.

Q. Mr. Williams, you have been advised of your rights and signed a waiver of your rights. Is that correct?

A. Yes.

Q. And you did that of your own free will, freely and voluntarily?

A. Yes.

Q. And you understood what your rights were. Is that correct?

[596] A. Yes.

Q. You have told us this evening concerning Mr. Soloman I believe of a house behind where you live. Is that correct?

A. Yes.

Q. Where do you live?

A. Right there on the corner of Keen and Henry.

Q. And which house does Mr. Soloman live in?

A. He rents an apartment on up Keen Street right behind my house.

Q. Okay. What do you recall what happened with Mr. Soloman?

A. Well, one night as I was coming home late, I didn't have no money and I was very depressed, and I went up to Mr. Soloman's house. And I noticed there won't no lights on. And I know he was in there. The front door and the first door was open. And I went to the front door, and that first door, I went in there. And the other door was shut. I heard him coughing and evidence that he was in there. He was awake. And at that time I pushed on the door and I couldn't get it open. About that time I grabbed some of the clothes he had hanging up and [587] popped me in my face. And I lit a match to them and stuck them right in front of the door. And they were burning. And I went down to the . . . down the steps, and I waited until the flames got bigger and bigger. At one point he came to the door and then he opened it, and it was burning. And I ran out and I helped him put it out. As he was putting it out he was coughing, 'cause a lot of smoke was in the house. And at that time he was bending over, and I went into the kitchen and I grabbed a knife, a small steak knife, and I just plunged him in the side with it. I don't know whether I wanted him to die or just wanted to see what he had in his pocket. As he fell to the floor I reached in his pocket and I grabbed some twenties, and . . . two twenties, and two tens and a couple of ones out of his pocket. At that point I made sure that the fire was out, because I really didn't want the man to die. And at that point I left and went to the Quick Check and called the Rescue Squad and the fire department.

Q. And you were later interviewed by Detective Evans and myself. Is that correct?

[598] A. Yes. I didn't admit to it because, I mean, it just seems like I don't know what got over me, but now I realize that things were very wrong, and I am fully aware of the punishment that I'm going to receive. That's why I wanted to get some help for what I was doing.

DETECTIVE BROWN: This interview is ended. The time is 5:47 p.m."

MR. FULLER: I would like to introduce this tape into evidence, if your Honor, please.

JUDGE INGRAM: All right, that will be Commonwealth's exhibit N.

Q. Detective Evans, when did this take place, involving Mr. Soloman?

A. I'm note sure of the date because I wasn't involved in the initial investigation. It was back in December.

Q. All right, it was after the murder of Mr. Stone?

A. Yes, sir.

MR. FULLER: Now I would like to also introduce at this time, if your Honor, please, the tape in regard to the case [599] that we have just tried involving Harris Thomas Stone. We did not introduce it at the time because it had some remarks about these other cases. I don't think it's necessary to replay it because the jury has now heard everything that at that time could be introduced.

JUDGE INGRAM: All right, that will be marked as Commonwealth's exhibit O.

Q. All right, Detective Brown, also on April 25th at the same time you were talking to the defendant about the Stone case, the Stroud case and the Soloman case, could you tell us whether or not after having been advised of his constitutional rights, in Commonwealth exhibit number six, if the defendant gave statements concerning two grand larcenies of automobiles?

A. Yes, sir, he did.

Q. Do you have those statements? Is this one of the statements the defendant gave?

A. Yes, sir, it is.

Q. And he had been advised of his constitutional rights [600] in exhibit number six. Is that correct?

A. Yes, sir, he had.

Q. Would you read that statement, please?

A. "My name is Terry Williams. I am thirty-one years old. I have been advised of my rights and I have signed a waiver of my rights and make the following statement of my own free will with no threats or promises having been made to me. I took a car from Riverside Center. It was parked in the parking lot of the movies there. I took the car and parked it over near Church Street. The car had a vinyl top, it was blue in color. This was back around the first of the year. I threw the keys away to it. Detective T. A. Brown has read this statement back to me and it is true and correct to the best of my knowledge. Signed, Terry Williams."

Q. I would also like to show you this statement and ask you if this was also a statement that the defendant gave you in regard to another automobile?

A. Yes, sir, it was.

Q. Would you read that statement?

[601] A. "My name is Terry Williams and I am thirty-one years old. I have a seventh grade education. I have been advised of my rights, and I have signed a waiver of my rights and I make the following statement of my own free will with no threats or promises having been made to me. I stole a white Ford car from the Holiday Inn. It had a black top. I parked it over next to the cemetery in the project. I have been asked about a Colt 45 beer can in the car. It was already there. And I have been asked about a pack of Merit cigarettes in there also. These was also already in the car, but I smoked some of them. I took the keys and threw them away. I have been read this statement back to me by Detective T. A. Brown, and it is true and correct to the best of my knowledge. Signed, Terry Williams."

MR. FULLER: I would like to introduce these two statements into the evidence.

JUDGE INGRAM: All right, they will be marked as Commonwealth's exhibits P and Q.

[602] Q. All right, Detective Brown, in going through the police records and so forth were these two cars designated as stolen cars?

A. Yes, sir, they were.

Q. Was the defendant tried and convicted on these charges later?

A. Yes, sir, he was.

MR. FULLER: I would like to introduce into the evidence the conviction record of the defendant as to the two grand larcenies. That right there indicates that there were two indictments.

JUDGE INGRAM: All right, that will be Commonwealth's exhibit R.

Q. Detective Brown, I believe also on August the 26th of this year, which was last month, the defendant was charged with arson. Is that correct?

A. Yes, sir.

Q. In the city jail?

A. Yes, sir.

MR. FULLER: I would like to introduce into the evidence, if your Honor, please [603] the court order convicting the defendant of arson.

JUDGE INGRAM: All right, that will be marked as Commonwealth's exhibit S.

Q. The defendant was convicted last Wednesday?

A. Yes, sir.

Q. This arson charge took place on August the 26th in the jail?

A. Yes, sir.

Q. Now, Detective Brown, on May the 2nd at the time you talked with the defendant, after having advised

him of his constitutional rights as indicated by Commonwealth's exhibit number twelve, the defendant, you've already testified I think to the jury that the defendant told you which of his two statements, April 25th and April 28th, was true. Is that correct?

A. Yes, sir.

Q. And which one did he say it was?

A. The first statement on April 25th, 1986.

Q. All right, and then he gave you some additional information about the murder of Harris Thomas Stone. Is that correct?

[604] A. Yes, sir.

Q. You have already testified that he told you that he threw the wallet over the Worsham Street bridge?

A. Yes, sir.

Q. Did he say anything else on that occasion?

A. Yes, sir.

Q. What, if anything, else did he say?

A. He made numerous statements, that his mother told him that he was dreaming, having nightmares. He stated that he had blood on his hands and shoes, and he said that he had on white pants and a black shirt. His mother told him that he did not have blood on his clothes. This was when we was talking to him about Alberta Stroud. He said that he was sorry, that he did everything and wished he had not done it. He said that he did not know who he was anymore. He said that it

seemed like when someone did something to him, that he wanted to get them, and something would just come over him. He said that he wanted to just choke some of the guys in the jail cell, and one day some had gone to the library and one guy was laying on the bed, and he got the [605] urge to just go over and choke him. Another time he was playing cards and he thought he could just hit someone and break that person's jaw without him ever knowing what hit him. He said that if someone or something was on t.v. that he liked or that he was doing something that he was okay, but when he was alone and the lights and t.v. was off, that all he could do was think about the things that he has done and that he was bothered by this. He said that he falls asleep thinking about his and often dreams about it. He said that he was with a guy named Joe Joe riding around when he sold the .357 gun. Joe Joe lives somewhere in the Java area. He is a friend of his wife, and his wife's name is Jenny Childress Williams and she lives in Java. She and Terry have not lived together in about nine years. He said he got $100.00 for the gun.

Q. All right, that's all I have.

CROSS EXAMINATION

By Mr. Motley:

Q. Detective Brown, concerning the two automobiles, [606] I believe you testified as to the statements last in the defendant's trial on those charges. Is that right?

A. Yes, sir, it is.

Q. And to the best of your knowledge I believe the evidence showed that both of those cars were returned to their owners undamaged. Is that correct?

A. Yes, sir.

Q. And was Terry Williams cooperative with you in telling you about those automobile thefts?

A. Yes, sir, he was.

Q. And did the information he gave you about them appear to be true and correct?

A. Yes, sir.

Q. Did he appear to the remorseful about being involved in those thefts?

A. He said he was sorry for everything he had done.

Q. He said he was sorry for everything he had done. And as far as all of these interviews that you had with him, has he made the statement from time to time that he had something come over him, or something like that?

A. Yes, sir.

[607] Q. Has been able to explain to you what he means when he says that?

A. No, sir.

Q. And I believe there would be times on several of these offenses where he would say deny something and then come back later and admit it. Is that right?

A. The only time that he made a denial was on the 28th of April when he talked to Detective Evans, and I wasn't present.

Q. Right. But what I'm asking you, he recanted some statements that he gave. He came back two days later I think, several days later, on May the 2nd, and said, "Let me tell you what is really the truth, what really happened." Is that right?

A. When we interviewed him again, and at that time he reiterated that what he had originally told us was the truth.

Q. Right. Thank you. I have no other questions.

RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. Detective Brown, he retracted what he told you on the 25th. Is that right?

[608] A. Yes, sir.

Q. And you went back to him on May 2nd and asked him again?

A. Yes, sir. I went to him. He did not ask for me.

Q. That's all.

MR. MOTLEY: Nothing further.

. . . .

DR. MILLER M. RYANS, who had previously testified as a witness on behalf of the Commonwealth, was recalled

as a witness on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name to the Court and jury, please?

A. My name is Dr. Miller M. Ryans.

Q. Dr. Ryans, what type of doctor are you?

A. I am a forensic psychiatrist.

Q. And what does a forensic psychiatrist mean?

A. We are concerned primarily with cases of a criminal nature. We determined competency of a patient to testify in court, and if they are not competent, we treat them until they are.

[609] Q. Dr. Ryans, would you state what your qualifications are?

MR. MOTLEY: Your, Honor, I will stipulate his qualifications as an expert.

JUDGE INGRAM: All right, sir. All right, Mr. Fuller you may proceed to examine Dr. Ryans as a forensic psychiatrist.

MR. FULLER: As an expert?

JUDGE INGRAM: Yes, sir.

MR. FULLER: All right, sir.

Q. Dr. Ryans, did you have an occasion to see the defendant, Terry Williams?

A. Yes, I did.

Q. When did you first see him?

A. He was admitted to the forensic unit of Central State Hospital on July the 29th, 1986.

Q. Had he been seen by any members of your staff before that time?

A. Yes. He was seen by our psychologist, Dr. Arthur Centor.

Q. And I believe that was in June. Is that correct?

A. That is correct.

Q. And did you have access to that information?

[610] A. Yes.

Q. All right, and how long did he stay in Central State?

A. He was admitted on July the 29th 1986 and was discharged on August the 11th, 1986.

Q. Dr. Ryans, were you able to determine, based upon your examinations and evaluations, as to whether or not the defendant was competent to stand trial in this case?

A. Yes, I did.

Q. And what was your evaluation?

A. It was my opinion that Mr. Williams was competent to plead and participate in the legal process and assist his attorney in his defense.

Q. All right, did you reach a conclusion as to whether or not he had any emotional or mental problems?

A. Yes we did.

Q. What was that conclusion?

A. He did not have any mentally or emotional problems. He was functioning on borderline level of intellectual functioning, which is between mild mental retardation and low normal intellectual level.

Q. But at that particular rate, I believe his I.Q. [611] was around seventy-five, would he be competent to understand the proceedings and intelligently and knowingly waive his constitutional rights?

A. Yes.

Q. And what level would it take so when a person wouldn't be able to do that?

A. I would say anywhere from mile mental retardation on down.

Q. And what I.Q. level would that be?

A. That would be below seventy.

Q. Below seventy?

A. Yes.

Q. All right, now but his I.Q. was such that he understood the nature of the proceedings. It that correct?

A. That is correct.

Q. All right, and you said he was not suffering from any mental illness?

A. No, sir, he was not.

Q. All right, and could you tell us whether or not he was suffering from any irresistible impulses?

A. No, sir, he was not.

Q. Dr. Ryans, were you able to make an evaluation [612] as to whether or not he was competent to stand trial?

A. Yes, we did.

Q. And what was that evaluation?

A. It was our evaluation that he was competent to stand trial.

Q. He was not suffering from any mental illness?

A. No, he was not.

Q. Did you determine whether or not he was hallucinating?

A. Yes, we determined that he was not.

Q. Did he indicate to you that he was hallucinating?

A. No, he did not say to us that he was hallucinating. He did say that he had exceptional powers to determine something, to see something in a dream that has passed, that had already happened and give details of it.

Q. All right, did this . . . How did you evaluate that?

A. Well, we found that it had nothing to do with our evaluation for competency.

Q. It had nothing to do with whether the was mentally ill?

A. It had nothing to do with mental illness.

[613] Q. He showed no signs of mental illness?

A. He did not.

Q. Now, Dr. Ryans, have you had an opportunity to study the defendant's past record as far as criminal activity is concerned?

A. Yes.

Q. And what, if anything, have you studied?

A. Well, I was particularly interested in the fact that he had an armed robbery charge that he was convicted on previously.

Q. All right, and any other specific incidences that you paid particular attention to?

A. No, I focused on the armed robbery.

Q. All right, did you read his statement concerning the malicious wounding charge against the defendant involving a seventy some years old lady?

A. Yes, I did.

Q. Are you aware of her condition?

A. Yes, I understand that she is in serious condition.

Q. All right, and based upon your evaluation of the armed robbery, and the malicious wounding and the

other charges, are you able to reach a conclusion as to the possibility, or lack of possibility, [614] or probability, or lack of probability of future dangerousness on the part of the defendant?

A. Yes, I have made a conclusion.

Q. What is your conclusion?

A. It is my opinion that there is a high probability that he would commit criminal acts of violence, and that he constitutes a continuing threat, a serious threat to society.

Q. That's all I have. Answer counsel's questions.

CROSS EXAMINATION

By Mr. Motley:

Q. Dr. Ryans, when was the last time that you examined Terry Williams?

A. August the 11th, 1986.

Q. Have you talked with him since that time?

A. No, I have not.

Q. Have you sat down and talked with him about these other cases and any convictions in them?

A. No, I have not.

Q. Dr. Ryans, I'm assuming that you had access to certain items of evidence, which included the defendant's statements given the police and things of that sort, in various cases?

[615] A. Yes, that is correct.

Q. And in those did you see any signs of wanting to clear his conscience or even having a conscience about things that had happened?

A. Yes.

Q. And could you elaborate on that?

A. Well, it would be my opinion that the fact that he brought the subject up after the fact that the deceased was thought to die of natural causes, and to me that would indicate that he did have a conscience and had guilt [sic] feelings about it.

Q. You are aware that his statement was voluntary, that it was something he came to the police about, not vice versa?

A. Yes.

Q. And you are also aware, I assume that it caused really a closed file to be reopened and a new investigation begun that would not have been made otherwise?

A. That is correct, sir.

Q. And I think you also are aware that he gave statements not only about that offense, but also about the Stroud beating and the automobile larcenies?

[616] A. That is correct.

Q. And are you aware also that his remarks, particularly as to the automobile larcenies, required the investigating detective, Mr. Brown, to have to go get out old missing automobile files just to see what he was talking about? Are you aware of that?

A. That is correct. Yes, I am.

Q. And do you also recall Mr. Williams making statements that at times something comes over him, he isn't sure what, but something comes over him?

A. Yes.

Q. What did you attach to that?

A. It would indicate that mostly [sic] likely under stress he would resort to instead of constructive acting out behavior, he would resort uncontrolled, poor impulse behavioral acting out.

Q. In other words, doing things that were wrong or might hurt other people?

A. Yes, in a violent manner.

Q. And then he would tell about it later on?

A. That is correct.

Q. And feel guilty about it?

[617] A. Yes.

Q. Dr. Ryans, I know that you are being called on for a professional opinion, but really you're having to make some estimate or even speculation as to how this man might behave in the future?

A. That is correct.

Q. No other questions.

RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. Dr. Ryans, when this stomething [sic] comes over the defendant, you say he acts under stress. He knows the difference between right and wrong does he not?

A. Yes, he does.

Q. Therefore, he's not mentally ill?

A. That is correct.

Q. And he's not acting from an irresistible impulse, so he does have control over his actions doesn't he?

A. That is correct.

Q. But he does them anyway?

A. Yes.

Q. That's all.

[618] RE-CROSS EXAMINATION

By Mr. Motley:

Q. And then, Dr. Ryans, I believe his conscience comes into play afterwards. Is that right?

A. Yes, afterwards.

Q. But it's still there?

A. Yes.

Q. Thank you. No other questions.

RE-RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. Based on your records and your discovery, even though his conscience comes into play afterwards, he does it again?

A. Yes.

Q. That's all.

MR. MOTLEY: No other questions.

. . . .

DR. ARTHUR CENTOR, who had previously testified as a witness on behalf of the Commonwealth, was recalled as a witness on behalf of the Commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name to the Court and jury, [619] please?

A. Arthur Centor, C-e-n-t-o-r.

Q. Dr. Centor, what is your occupation?

A. I am a clinical psychologist at the forensic unit in Central State Hospital in Petersburg, Virginia.

Q. All right, Dr. Centor, how long have you worked for the State of Virginia?

A. Well, for the State of Virginia I started in 1954, that's thirty-two years ago. I didn't work all of the time for the . . .

Q. You haven't been there continuously for all of that time have you?

A. No, not continuously, no. Eight years I did not work for the state.

Q. And during this period of time you have testified on many occasions throughout the State of Virginia and also here in Danville as an expert as far as forensic, clinical psychology is concerned?

A. Issues relating to psychology and the law, yes, sir.

Q. Right.

MR. FULLER: Do you have any objections to Dr. Centor's qualifications?

MR. MOTLEY: No. The defense is well [620] familiar with Dr. Centor and has no objection to his being qualified as a forensic psychologist.

Q. Dr. Centor, when did you first see the defendant, Terry Williams?

A. In June of this year, June the 27th actually. I saw him for two hours and forty-five minutes then.

Q. And what else did you do?

A. I tested him on that date for two hours and ten minutes.

Q. All right, and what did your testing reveal?

A. Well, there were issues at that particular time that I was requested to answer. And one was his competency to plead and stand trial and assist in his own defense. And the other was whether he was competent at the time of the alleged crimes, which he was charged with at that time.

Q. All right, and based upon your interviews and testing, what was your conclusion as to his competency to stand trial?

A. My opinion was that he was compent [sic] to plead and stand trial, and that he did not lack substantial capacity to understand the proceedings against [621] him or to assist in his own defense.

Q. What did you determine to be his understanding of the proceedings against him?

A. I did question him about his understnading [sic] of the knowledge of the rolls and functions of the various participants in the courtroom procedure, such as, "Who is your defense attorney? What does he do? Who is the Commonwealth's Attoeney? [sic] What does he do? Who is the Judge? What does the Judge do? How many are there in a jury? What does a jury do?" Rolls and functions of various participants in courtroom procedures. And he had a good understand [sic] of those issues. I also questioned him about his knowledge of the various pleas and their consequences, guilty, not guilty, and not guilty by reason of insanity, and what happens if somebody is found guilty, guilty and so on. He had a good understanding of those issues. I then questioned him about his knowledge of plea bargaining and appeal, which is a little bit more complicated. He was a little bit weak about plea

bargaining, but he understood what appeal was. So overall he had a good understanding [622] of the knowledge of courtroom procedures.

Q. All right, Dr. Centor, could you tell us what your evaluation was as to whether the defendant knew the difference between right and wrong or whether he was mentally ill?

A. There was psychological testing that took place and psychological as well as the interviews indicated that he was not suffering from any mental illness or mental defect and that at the time of the alleged crimes for which he was being examined at that time, he did not show any defect of reason due to defect of the mind or defect of the mind so as not to know the nature, the character or the consequences of his acts or the difference between right and wrong. And furthermore, on the basis of the tests and the interview, I determined that he was not suffering from a loss of volition or willpower due to disease of the mind or defect of the mind at the time of the alleged crimes.

Q. In other words, he had control over his volition.

A. Yes. Yes. There was no loss of volition or willpower at that time. He was not suffering [623] from any irresistible impulse.

Q. All right. Dr. Centor, did your testing and your interview with the defendant show any conflicts or any inconsistencies?

A. No, there were none. If just showed no signs of mental illness or mental defect. Now he claimed . . .

Q. That's what I mean is, if what he claimed show any conflict or inconsistency with your testing?

A. Yes. Well, that is there was no conflict in my findings, but he claimed that he was hearing voices and that he was having visual hallucinations too. But there are certain tests for these people who claim to hear voices and people who claim to see things that are not there, and on both of these tests showed that his claim was not substantiated or that it was not true, that his claim was not one that was based on reality. He had also made some claim that things came over him over which he had no control, and he was given apart from the psychological tests and the psychological interviews, he was also given a neurological [624] examination where a neurologist examines him to see if there is any defect in his nervous system. He also received two brain waves, one of them administered just normally, but one very special one with a sleep deprived. That is the person is kept up all night and then the brain wave is taken the next morning, and that's very sensitive and there to normal brain wave, normal neurological, normal sleep deprived E.E.G., so that from all tests that we were able to feel were relevant, he showed no disorder.

Q. All right, so what would your conclusion be as to what he claimed and what the testing indicated?

A. Well, the testing so far as his claim of the having oratory or visual hallucinations of hearing voices and seeing things, was found to be malingered. That was not true, just claiming that, but it was not true. The claim that things came over him and that he was not able to explain were not substantiated by psychological testing or the

other tests, such as neurological examination and brain wave. So that that too was not substantiated.

[625] Q. Dr. Centor, besides the interview and testing you did on June 27th, did you have an occasion to see and evaluate the defendant on another occasion?

A. I did have occasion to see him briefly on July 29th of this year, but I then did an extensive interview on August the 7th for one hour, on August the 8th for one hour and fifteen minutes, and I administered a psychological test on August the 8th for twenty minutes.

Q. And the defendant from July 29th until August the 11th was at your hospital. Is that correct? As an in patient.

A. He was an in patient on that occasion. That is correct.

Q. All right, and did you have an occasion to interview and evaluate the defendant at a later date, in September?

A. Yes, I did. And that date was September the 9th for one hour and thirty minutes.

Q. Was that here in the Danville city jail?

A. Yes, it was.

Q. Was that after the arson charge?

[626] A. That is correct.

Q. All right, now based upon all these interviews and examinations are your conclusions the same as what you've just testified to?

A. That is correct.

Q. No change?

A. There has been no change. That's right.

Q. He knew the difference between right and wrong and is not suffering from an irresistible impulse?

A. That is correct.

Q. And he is competent to understand these proceedings?

A. That is correct.

Q. Dr. Centor, have you also had an opportunity to evaluate, study and evaluate, the defendant's prior record, history and record?

A. Yes, sir.

Q. And that evaluation of his history and prior record would among other things include what? That are some of the things it included?

A. Well, his adjustment in terms of any history that he has with difficulty with the law, alcohol and drug habits, working habits and so on. Among the various charges that he had, time spent in [627] incarceration and the actual nature of the offenses and so on.

Q. What was the nature of some of the offenses?

A. Beginning with not the juvenile, but the adult . . .

Q. No, just his adult.

A. Adult, of . . . the earliest one when he was about twenty, as an adult or twenty-one, was an armed robbery,

and he served time in the penitentiary for that. The one after that was a breaking and entering for which he served time in the penitentiary. The one he just got out, my understanding he got out in April of '85 from the penitentiary he was released on parole. And not long thereafter at least the first event he got into was seven months after that, which is the murder charge. A month after that a car theft, a month after that a car theft, a month after that was the malicious wounding. And more recently is the arson charge.

Q. Are you familiar with the facts and circumstance involving those cases?

A. Yes, sir.

Q. And based upon his history which you have studied [628] and these prior charges and so forth, could you tell us whether or not you have been able to form an opinion as to whether or not the defendant poses any future threat to society?

A. Yes, I have.

Q. All right, and tell us what that is and what you based your opinion on?

A. It is my opinion that the defendant, Mr. Williams, shows a high probability of committing criminal acts of violence that would constitute a continuing serious threat to society, based on the history, some of which I have given here, my evaluation, the nature of the offenses, the frequency of the offenses too. When one has two violent criminal acts in such a short period of time,

this enhances the probability of future criminal acts of violence.

Q. Thank you, Dr. Centor. Would you answer counsel's questions?

CROSS EXAMINATION

By Mr. Motley:

Q. Dr. Centor, when was the last time you talked to Terry Williams?

[629] A. September the 9th.

Q. September the 9th. And this was during the course of your last evaluation of him?

A. That is correct.

Q. Have you talked with him about his past record and some of these other cases?

A. Yes, sir.

Q. What has he told you about the older offenses, like for example, this 1976 robbery case that he was involved in and the 1982 break in?

A. The 1976 offense, he says that I believe it was his younger, or juvenile brother-in-law, told him where he could get some money, and he went with a gun, though it was unloaded he claimed, he went to this individual and got the money from this individual. Then the young brother-in-law then told somebody and he was apprehended, and in order to keep this youngster from having to do time he took all of the blame on himself. That's what he told me.

Q. Now, of course, you are also aware of and you've reviewed some of the evidence in the Stroud case, the beating?

[630] A. Yes, sir.

Q. And also the Harris Stone case, this homicide?

A. Also, that's right.

Q. I believe you've reviewed all of the statements he gave in those cases to the police?

A. That's right.

Q. And did you see any kind of indications of guilt or guilty conscience in any of those statements?

A. It would appear to me that the thought of his actions on those occasions was bothering him. That's the only explanation.

Q. As far as you can see, it was the only explanation?

A. It's the only rational explanation that I can come up with.

Q. That he was having a guilty conscience, and he was having problems with it, and he wanted to get it off his chest?

A. Well, it was a combination of guilty manifested by disturbed dreams that he was having at night. That is the guilt was manifested by his having nightmares.

Q. It was bothering him that much?

A. Yes, sir.

[631] Q. Thank you. No other questions.

RE-DIRECT EXAMINATION

By Mr. Fuller:

Q. But he kept doing these things didn't he?

A. The . . . From his release from the penitentiary until his time of his statement was one year. In this period he was doing it after having been returned to the penitentiary, or having been there two times, still in a very short period of time he committed these acts.

Q. That's all I have.

MR. MOTLEY: Nothing further of the doctor.

. . . .

DETECTIVE C. D. EVANS, who had previously testified as a witness on behalf of the commonwealth, was recalled as a witness on behalf of the commonwealth, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Fuller:

Q. You've already been sworn. Is that correct?

A. Yes, sir.

Q. State your name again, please.

[632] A. Detective C. D. Evans.

Q. Detective Evans, when did the incident involving Mr. Soloman occur?

A. December the 4th, 1985.

Q. Last year?

A. Yes, sir.

Q. All right, and at the time you first talked to the defendant, Terry Williams, he was already in the Danville city jail?

A. Yes, sir.

Q. Unrelated charges?

A. Yes, sir.

Q. That's all.

MR. MOTLEY: No questions.

* * *

[634] DIRECT EXAMINATION

By Mr. Fuller:

Q. Would you state your name to the Court, please?

A. Dr. James D. Sprinkle.

Q. Dr. Sprinkle, you are a surgeon. Is that correct?

A. That's correct.

MR. FULLER: All right, Mr. Motley, do you want me to go through his qualifications?

MR. MOTLEY: No. I'm familiar with Dr. Sprinkle's qualifications, and I'll stipulate his as an expert in his field.

MR. FULLER: All right.

JUDGE INGRAM: All right.

Q. Dr. Sprinkle, did you have an occasion to treat Alberta Stroud on the night of March the 5th, 1986?

A. I did.

Q. Tell us what condition she was in, when you saw her?

A. She was brought in by the rescue squad, reportedly having had a blood pressure of sixty . . . in shock . . . they applied mast trousers – those are compression trousers to keep the blood pressure up as well as possible. She was intubated by the [635] emergency room physician, Dr. Dunn, and airway was established. A peritoneal tap was done and gross blood was coming out of that tap, so therefore, I took her to surgery.

Q. All right, and what was the result of what you found?

A. The findings at the operating table were: a ruptured spleen, which was bleeding, a laceration of the left commoniliac vein, which was bleeding, bleeding from the right ovarian vein, so these were the three immediate things that were taken care of. The spleen was removed. The left common iliac vein was repaired, and the right ovarian vein was just simply tied off. There were multiple lacerations of the small bowel, which ultimately required a resection of about four inches of the mid-small bowel

and two inches of the lower bowel, and re-anastomosis. There was disruption the rectal sheath, in the left lower quadrant of the abdomen, that being the facial structure surrounding the main muscle, in that area. That was repaired at the time of closure of the incision.

Q. All right, Dr. Sorinkle, what could have caused [636] these type injuries?

A. Trauma.

Q. Some trauma. And would it all have been in one area, or . . .

A. That's uncertain. Obviously there was trauma to the left quadrant of the abdomen, where the rectal sheath was disrupted, that's for certain. Other than that, I can't say.

Q. All right, did she have any other injuries for which someone else treated her?

A. Yes.

Q. And where were they?

A. Head injuries.

Q. And I believe she was treated by Dr. Whitten for that?

A. That's correct.

Q. Your concern that night was the area that you have described, and you took her to surgery and removed her spleen and repaired the other areas. Is that correct?

A. That's correct.

Q. All right, and you treated her, I assume, through the post-operative period of time, and then turn [637] over to whom?

A. Well, she had renal shutdown the next day. Therefore, the nephrology group was called, Dr. Moore and those people. Subsequently therefore, they were writing most of the orders, but ultimately she was transferred to Dr. Perry just for general care.

Q. So you were . . . more or less released her, or did not treat her anymore after she recovered from the . . . the area that you performed the surgery on?

A. Basically true, yes.

Q. Okay. All right, answer Mr. Motley, if you will.

CROSS EXAMINATION

By Mr. Motley:

Q. Dr. Sprinkle, when was the last time that you examined Mrs. Stroud?

A. I don't know for certain on that, to be honest with you. Somewhere late in her hospitalization she was transferred to Dr. Perry, and I confined my examinations to the abdomen basically.

Q. And this was basically about the time that she came in and you performed surgery on her?

A. Yeah, that's correct. I performed surgery on her. [638] Yes, but I just checked her abdomen, her incision, you know, as she went along, to make sure it healed properly.

Q. Uh-huh, I see. Did that heal properly?

A. Yes, it did.

Q. And did she have . . . I know you mentioned that she had renal shutdown the next day after surgery, but from the emergency surgery that you performed when she came in, to the best of your knowledge, has she recovered from that?

A. Yes.

Q. Has she made a satisfactory recovery?

A. From the abdominal surgery, yes.

Q. Are you in a position to give a prognosis?

A. From the abdominal surgery?

A. Yes, sir.

A. The emergency situations have been corrected.

Q. Thank you. I have no other questions.

MR. FULLER: All right, thank you very much, Dr. Sprinkle.

. . . .

The tape recorded testimony of DR. PAUL A. MANSHEIM who had testified in Chambers with the Court, all [639] counsel and the defendant present, and which was stipulated to be made a part of the record as testimony on behalf of the defendant, was then played in open court, which was as follows: DR. PAUL A. MANSHEIM, a witness called on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Motley:

Q. All right, Dr. Mansheim, just to get this into the record, you are Dr Paul A. Mansheim, M.D.?

A. Yes.

Q. And you are engaged in the practice of psychiatry in Tidewater, Virginia?

A. That's right.

Q. I believe it's already been stipulated that you are a forensic psychiatrist and . . .

MR. FULLER: If you want me to, Mr. Motley I will stipulate his qualifications as a forensic psychiatrist.

MR. MOTLEY: All right, thank you.

MR. FULLER: If you want to go through them though, that's fine.

[640] MR. MOTLEY: Well, I have his C.V. that we could maybe make an exhibit in the case if we had to.

MR. FULLER: That's all right with me too.

JUDGE INGRAM: All right.

Q. Dr. Mansheim, I believe pursuant to an order of this court you examined Mr. Terry Williams, the defendant. Is that right?

A. That's true.

Q. And as part of the examination I think you also examined him as to the possibility of factors in mitigation regarding these offenses. Is that correct?

A. Yes, that's right.

Q. And what was the . . . . Well, let me phrase the question this way. Did you have a discussion with Mr. Williams concerning this part of your examination?

A. Yes.

Q. And what were some of the things he told you about that you consider significant?

A. He said that when he was charged with an armed [641] robbery in 1976 he took some bullets out of a gun that was used in order to make sure that no one was injured during that episode. And he felt that was significant because it was a way in which he had tried to act to make sure no one got hurt.

Q. You say he said he took the bullets out of the gun to make sure that no one would get hurt?

A. Yes.

Q. Did you have any discussion with anyone other than the defendant about that crime?

A. No.

Q. Did he volunteer this information to you?

A. Yes.

Q. Thank you, Dr. Mansheim. I have no other questions. There's just one other question, Dr. Mansheim, excuse me. Was there an offense in 1982 that Mr. Williams discussed with you?

A. Yes, there was.

Q. Could you tell us about that?

A. Yes. Mr. Williams said that in 1982 he was arrested for breaking and entering and also for grand larceny stemming from the same incident. And with respect to the issue of mitigation, he [642] said that he felt that he had been unfairly convicted because he was simply helping a friend move some furniture and he felt that that would be something that I should know about in the process of making an opinion about mitigating factors.

Q. He felt like there was a situation where he was wrongly convicted of that offense?

A. Right, and if people felt that he had been fairly convicted when he was wrongly convicted, then they might get the impression that his history was worse than it appears to him to be.

Q. Did he volunteer this information to you also?

A. Yes, he did.

Q. Thank you. I have no other questions.

JUDGE INGRAM: All right, Mr. Fuller?

CROSS EXAMINATION

By Mr. Fuller:

Q. Dr. Mansheim, the only thing you know about his allegations that he took the bullets out of the pistol was what he told you?

A. That is correct.

Q. You haven't talked to the investigating officers [643] or anyone involved in the case?

A. That is correct.

Q. And whether he did or did not take the bullets out of the pistol, you don't know of your own knowledge?

A. That is correct.

Q. All right, and this 1982 incident involving the burglary and grand larceny, did he tell you that he was caught while he was in this house, and that the owner of the house came and confronted him, and that he fought the owner?

A. He told me everything up to the point of fighting the owner.

Q. He didn't tell you about that?

A. No, I didn't know about that.

Q. And that they had all of the merchandise stacked up right at the front door, and when the owner came in and asked them what they were doing, they tried to get away and he and the owner had a pretty long confrontation?

A. I know they had a discussion, that there was a misunderstanding, but I didn't know there was a physical fight.

[644] Q. You didn't know that they fought out of the house, off of the front porch and out in the yard?

A. No, I didn't know that.

Q. All right, that's all.

RE-DIRECT EXAMINATION

By Mr. Motley:

Q. I have one or two more questions. Dr. Mansheim, did the defendant appear to be cooperative?

A. Yes.

Q. Did he seem to be sincere in what he was telling you?

A. Yes.

Q. I have no other questions.

. . . .

DOROTHY MOORE, the next witness called on behalf of the defendant, having been duly sworn, testified as follow.

DIRECT EXAMINATION

By Mr. Smitherman:

Q. Ms. Moore, please state your name.

A. Dorothy Moore.

Q. Where do you live, Ms. Moore?

A. 1312 Myrtle Avenue.

Q. Do you know the defendant, Terry Williams?

[645] A. Yes, I do.

Q. Do you know he's been convicted of capital murder?

A. Yes.

Q. Ms. Moore, how long have you known Mr. Williams?

A. Since '81.

Q. Since 1981? And what do you know about Mr. Williams? How do you know him?

A. Well, the only thing I've known, he's, you know, quiet and respectable, 'cause he's always had a lot of respect for me.

Q. Okay. How do you know him? What's your relationship with him?

A. He used to date my foster daughter.

Q. Did you have any . . . You say he was very respectful to you. Did your daughter indicate that he was in any way but respectful to her?

A. No.

Q. Have you ever seen him to be violent toward any person.

A. No.

Q. What do you do, Ms. Moore?

A. I'm a minister.

Q. Where is you ministry?

A. (Name of church not audible) Holiness Church.

[646] Q. Have you ever had contact with Mr. Williams due to this ministry?

A. Yes, I have.

Q. How.

Q. I have talked to him in person and by phone and I also wrote him a letter.

Q. About what?

A. Well, I talked to him about, you know, getting saved or getting in the church and stuff like that.

Q. Has he been in your home?

A. Yes, he has.

Q. How did he act in your home?

A. He acted, like I said, very respectable, you know, towards me and the family.

Q. Have you ever known him to be violent to anyone?

A. I've never even heard him say a bad word.

Q. Have you ever been worried about your daughter.

A. No.

Q. . . . when she was dating him?

A. No.

Q. How did you feel when you found out about this offense?

A. Well, I was just amazed because it didn't sound [647] something he would do, you know, what I knew of him.

Q. That's all of my questions. Answer Mr. Fuller's questions.

CROSS EXAMINATION

By Mr. Fuller:

Q. Ms. Moore, Did you know he had been convicted of armed robbery in 1976?

A. Well, I didn't know him back then.

Q. You first knew him in 1981?

A. Uh-huh.

Q. That was right after he got out of the penitentiary for the armed robbery? Is that right?

A. Well, I didn't know about the armed robbery.

Q. Well, did you know that the next year, in 1982, he was convicted of burglary and grand larceny and sent back to the penitentiary?

A. Yes.

Q. So you really didn't get to know him very long because he wasn't here very long was he?

A. Well, I, you know, met him then, because we lived right next door to his mother.

Q. To his mother. Did you live on Henry Street at the time?

[648] A. Yes.

Q. I see. And you met him in '81 and in '82 he got sentenced to the penitentiary for I believe eleven years. Is that right?

A. I don't recall how long it was, but I knew he was sent.

Q. All right, and then did you know him any when he came back in 1985?

A. Yes, because even when he was in there I talked to him several times.

Q. While he was in the penitentiary?

A. Um-huh.

Q. And then he came back in '85. Right? Somewhere along in that period of time. Right?

A. Yes.

Q. And you say you are surprised to hear about the fact that he has been convicted of murdering Harris Thomas Stone?

A. Yes.

Q. Have you also heard that he has been convicted of the malicious wounding of Alberta Stroud?

A. Yes.

Q. That's all I have.

[649] MR. SMITHERMAN: That's all.

. . . .

DEBORAH GRANT, the next witness called on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Smitherman:

Q. State your name for the Court.

A. Huh?

Q. State your name for the court.

A. Deborah Grant.

Q. Where do you live, Ms. Grant?

A. On Levelton Street.

Q. On what?

A. On Levelton Street.

Q. How far is that from Henry Street?

A. All the way across the bridge.

Q. Do you know Terry Williams, the defendant?

A. Um-huh.

Q. How long have you known him?

A. I've known him about eleven years.

Q. And in those eleven years, have you seen him a lot?

A. Um-huh.

[650] Q. What's your relationship with him?

A. Just friends.

Q. You've never dated him. Right?

A. Um-huh.

Q. But you're a good friend of his?

A. Um-huh.

Q. Ms. Grant, in your friendship with Mr. Williams has he ever . . . what's he been like?

A. He's always been nice to me.

Q. He's always been nice to you?

A. Um-huh.

Q. Have you ever been afraid of him?

A. Huh-uh.

Q. Have you ever seen him do anything in your presence that would . . . to other people or anything?

A. No.

Q. Has he ever been violent to anybody?

A. No.

Q. That you know of?

A. No.

Q. You know that he was convicted back in 1976 of armed robbery.

A. I've read about it.

[651] Q. Okay. You know that he went to prison there for awhile. Right?

A. Yes.

Q. Did you know him when he came back?

A. Yes.

Q. How many times a week did you see him?

A. Right often.

Q. Okay. During that time, was there any indication that he was violent or anything like that?

A. No.

Q. Was there any indication that . . . anyting [sic] that made you scared of him?

A. No.

Q. Did he make anybody else scared of him while you were in his presence?

A. No.

Q. You know he went to prison again in '82?

A. I read about it.

Q. And he was gone for awhile?

A. Uh-huh.

Q. And he came back in '85. Did you know him then.

A. Yes.

Q. Were you friends with him then?

[652] A. Yes.

Q. Was there any indication at all that he was violent?

A. No.

Q. Any indication that he was (would) in any way hurt anybody or anything like that?

A. No.

Q. Now you know about this offense and the offense . . . of the malicious wounding offense?

A. Yes.

Q. On West Green Street. You know about that one?

A. I've read about it.

Q. How did you feel when you heard about that?

A. Shock.

Q. Why?

A. Because he don't seem like the type of person that would do something like that.

Q. What type of person is he?

A. He's nice, a respectable person. He's always been good to me.

Q. No other questions. Answer Mr. Fuller's questions.

CROSS EXAMINATION

By Mr. Fuller:

[653] Q. Ms. Grant, you really haven't had that much contact with Mr. Williams over the eleven years have you?

A. Just friends.

Q. Well, he went to the penitentiary in 1976 didn't he?

A. Um-huh.

Q. And he got out in four years, 1980. Right?

A. Right.

Q. Then he went back to the penitentiary again in 1982. Right?

A. Right.

Q. He got out in 1985?

A. Right.

Q. So the eleven years you knew him, he was in the penitentiary for seven of them anyway. Right?

A. I guess.

Q. Well, armed robbery is a violent crime isn't it?

A. Yes.

Q. And you say you read about his lady that was maliciously wounded on Green Street?

A. Yes.

Q. But it hadn't been in the paper.

A. I read something about it in the paper.

Q. There may have been something in the paper about [654] her but there wasn't anything in the paper about Mr. Williams committing that offense?

A. No.

Q. But you have to agree that that was a pretty violent offense wouldn't you?

A. Yes.

Q. She was badly beaten?

A. Yes.

Q. And also the murder of Mr. Stone was a violent offense wasn't it?

A. Yes.

Q. That's all I have

MR. SMITHERMAN: That's all the questions I have.

. . . .

LULU WILLIAMS, the next witness called on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Smitherman:

Q. State your name for the Court.

A. My name (is) Lulu Williams, Terry Williams' mother.

Q. Mrs. Williams, you've been in the court oom all day [655] haven't you?

A. Yes.

Q. You've heard everything that's been said about your son?

A. Sure.

Q. Terry's been at home when he's not been in prison hasn't he?

A. Sure.

Q. What's he like at home?

A. He's a nice boy at home.

Q. Has he ever hurt anybody in your presence?

A. No.

Q. Has he ever threatened anybody in your presence?

A. No.

Q. What, if anything, has he ever done to you?

A. Not anything. He always when I'd tell him to do anything, he does it.

Q. Where do you live?

A. 202 Henry Street, 202 Henry Street.

Q. Henry Street, 202 Henry Street? And you've been there how long?

A. '74.

Q. Since '74.

[656] A. Right.

Q. And Terry's been with you whenever he's not been in prison?

A. Right.

Q. What do you do, Mrs. Williams?

A. I work at Dibrell Tobacco Factory every season, and when I'm not working there I work for Cunningham and Hughes.

Q. What's that?

A. The undertaker shop.

Q. What?

A. The undertaker shop, Cunningham and Hughes.

Q. Excuse me, I didn't understand you.

A. Right.

Q. What about Terry? Has he worked recently?

A. Not really. He did have a job working on the railroad when he first got out, you know, this last time.

Q. What happened?

A. Well, he was laid off. He got his leg hurt, and then he went back after he went to the hospital and got treated and everything. He stayed out about a week. Then he returned back to work, and [657] they let him work about a week I think, and then they laid him off.

Q. You know that he didn't get fired did he?

A. Not to my knowledge.

Q. He worked for who?

A. I don't know his name.

Q. You don't know the name of the railroad? You said it was a railroad though. Right?

A. Right.

Q. Mrs. Williams, when . . . how much schooling did your son have?

A. I believe he had . . . I don't know now, it's been so long.

Q. Did he graduate from high school?

A. No, he didn't graduate.

Q. He quit before he graduated?

A. Right.

Q. Has he been at home since then?

A. Sure. No more . . . He married. He married though then him and his wife . . . He stayed with his wife awhile and then . . . Nawh, he married and came home to live with us.

Q. Uh-huh.

[658] A. Then they went back to his wife's house and some way of another they separated.

Q. They separated a while back though, before you moved to Henry Street?

A. Huh-uh.

Q. Okay, afterwards?

A. Afterwards.

Q. Mrs. Williams, you said he was good around the house. Has anyone ever told you that your son was violent toward them?

A. No.

Q. That they were scared of him?

A. No.

Q. Have you got any reports on Terry's bad behavior from other people?

A. No.

Q. You know he's been in prison?

A. Sure, I know that.

Q. You know about the armed robbery?

A. Right.

Q. And the other convictions he's had?

A. Right.

Q. Did the armed robbery surprise you?

[659] A. Sure it did.

Q. What about the . . . When you heard about these latest offenses, what did you think?

A. Well, I didn't believe it. I just couldn't believe it when he called me and told . . . I just couldn't believe it. It didn't look like it was in him, and I know he didn't act like it was in him.

Q. Did you ever find any clothes that were bloodied?

A. No, I didn't find any clothes that were bloody. He asked me did I have any blood on one night or day one. I didn't pay any attention about, you know, about it. I hadn't heard nothing or nothing like that, but I ain't seen no blood nowhere, you know.

Q. When you heard it you couldn't believe it. Right.

A. (To which the witness nodded her head in the affirmative.)

Q. Because you couldn't believe it. Did you tell him he was dreaming?

A. I sho did. He must have been dreaming, because I don't believe he did nothing like that.

Q. You just couldn't believe it.

A. I just couldn't believe it.

[660] Q. Why?

A. Because I know he just . . . couldn't believe it because he minded me and everything at home. I just, I don't know.

Q. Do you think he's a danger to other people now?

A. No, I don't think so.

Q. Why not?

A. Because I don't believe it.

Q. Has Terry ever had any problems emotionally?

A. Well, he fell out the school house when he was small. Well, you know, Grasty School?

Q. Um-huh.

A. I don't know whether you know it or not, but when he was seven or eight years old he just fell off on top of his head. And so we asked him, you know, "Do you want to go to the emergency room?" And he said, "I'm all right right now," or something like that. So we didn't pay it no more mind. So and then from then on we just didn't think no more about it, until I believe now that boy still needs help. I declare I do. It's something wrong.

Q. He's just not himself is he?

[661] A. Huh-uh.

Q. That's all the questions.

CROSS EXAMINATION

By Mr. Fuller:

Q. Mrs. Williams, you say he fell off a building. He went to the hospital, and they teated [sic] him and released him. He wasn't even admitted to the hospital was he?

A. No. They didn't carry him to no hospital. They didn't carry him to no hospital.

Q. They didn't take him to the emergency room?

A. No. They didn't carry him to no hospital. They didn't carry him to no hospital.

Q. They didn't take him to the emergency room?

A. No.

Q. They didn't?

A. No.

Q. All right, so he didn't even have to go to the hospital?

A. He said, "I'm all right." That's what he said.

Q. You don't believe he did any of these things that he's been found guilty of do you?

A. Well, I don't believe he would have did it, but you know, he done did it, you know. So there ain't . . . I don't know what to say, you know.

Q. All right, that's all. I don't have anything else.

* * *

[668] The jury then returned to the courtroom, and were read its instruction granted by the Court.

JUDGE INGRAM: Ladies and gentlemen, that is your further instruction of the Court. The Commonwealth has agreed to waive its opening argument, therefore, counsel for the defendant will argue first. The Commonwealth will have the occasion to give the final closing argument. Mr. Motley?

MR. MOTLEY: Thank you, your Honor. May it please the Court, ladies and gentlemen of the jury, I know we've all had a long day and I'll try not to make it much longer for you. I appreciate all of your patience so far. You are going to hear a number of cases this term. You've probably heard some other jury cases already. When October rolls [669] around next week – well, it rolls around this week, it rolls around tomorrow – you will be hearing some civil cases as well. I doubt that you will ever hear a case during your jury service that is as serious or weighty as this case. A man's life is on the line, and you realize that, and have been instructed by the Court that this has been a capital case from the very beginning. Both of us have a right tough job tonight. I don't know which side of the jury box it's easier or harder to be on. We've got a very difficult job tonight. When you've got to determine whether Terry Williams here receives the death penalty or a life sentence, that's going to be a difficult task. I have the very difficult task of trying to persuade you to bring back a life sentence instead of the death penalty. Law school was right rigorous. It was three years of hard work. There are a lot of things they don't teach you. One of the main things they don't teach you is how to get up in front of a jury and argue [670] to spare a man's life. I'd like to talk with you for just a few minutes and tell you why I think Terry Williams' life is worth saving. Ladies and gentlemen, Terry Williams would not win a personality contest. I doubt seriously that he is going to win any civic club man of the year award. I doubt very seriously where you are going to pick up The Register or The Bee and read where he's been awarded a humanitarian award, or community service award or

anything of that sort. Terry Williams has not been a good citizen. He has not been someone that Danville would be proud to claim as one of its native sons. I'll admit that; there's no denying that Mr. Williams has got admittedly a long history of landing on the wrong side of the law. You've heard about that this afternoon during the part of this trial where the Commonwealth puts on its evidence as far as what the sentence should be and we put on our evidence. You heard that he had a 1976 armed robbery conviction. [671] You also heard that he was convicted in 1982 of breaking into someone's home and stealing some property. You also heard about some other recent things that he's gotten in trouble for, two automobile thefts, and a very brutal incident involving Mrs. Alberta Stroud, something that may be in a way worse than this murder trial. You've heard about all of these things. Ladies and gentlemen, I can't condone it. I can't tell you to look the other way. I can't tell you to close your eyes to them or to be like an ostrich and stick your head in the sand, and say, "They aren't there." They are there. They are before you; they are a part of the permanent record on file in the Clerk's Office down the hall here. There is nothing that I can do or even would ask you to do to ignore that. You can't. It's there. And that, of course, has to come into play, be factored in when you sit down and fix the sentence for this man. And I will admit too that it is very difficult to ask you to show mercy to a man [672] who maybe has not shown much mercy himself. I doubt very seriously that he thought much about mercy when he was in Mr. Stone's bedroom that night with him. I doubt very seriously that he had mercy very highly on his mind when he was walking along West Green and the incident

with Alberta Stroud. I doubt very seriously that he had mercy on his mind when he took two cars that didn't belong to him. Admittedly it is very difficult to get us and ask that you give this man mercy when he has shown so little of it himself. But I would ask that you would. And I can't give you any logic or great earth shattering, moving reason why you should if you press pressed me. If you really pushed me, I would be hard pressed to give you a good, logical explanation because these things defy logic. We grew up and from childhood we want to believe that for everything in the world there is a logical explanation. We go to school and learn that there are logical explanations for why things work the way they do, why we have [673] weather, why we have electricity, why we have all kinds of things science (one word not audible), why our economic system, our government system works the way it does. We like to think that there is a logical, good, concise explanation for everything. Ladies and gentlemen, there is – there are – a lot of things that can be logically explained. Mr. Williams' treatment of Harris Stone defies logic; his treatment of Mrs. Stroud defies logic. Oh, yes, he can say he wanted some money when he was being mean. Maybe that is an answer; maybe it isn't, because Terry Williams, ladies and gentlemen, is a complicated person. As I said, he wouldn't win any personality contest. I don't know what makes him tick. I don't know what makes him do the things he does. I don't know why he gets in trouble. He's got a very loving, compassionate mother. I'm sure it broke her heart to get up there on the witness stand today and all but beg you to spare his life. He apparently came from a home where there was a mother who believed in things like

hard work and [674] respect for other people, not hurting people. She couldn't give you any logical explanation of why it happened. She didn't want to believe it. That's a natural reaction. It's like the old saying about a baseball scandal years ago. "Say is ain't so, Judge. Say it ain't so." That's probably the way Mrs. Williams felt up here on the stand today. She didn't want to say it was so; she did not want to believe it was so. It hurt her too badly. Ladies and gentlemen, Terry Williams is a complicated soul. He has done these things. Doctors have checked him out, some of the best psychiatric minds in the state. Dr. Mansheim from Virginia Beach has got a list of professional qualifications two pages long, about the same with Dr. Cantor and Dr. Evans. They are experts in their field. And a lot of us who are in the criminal justice system rely very heavily upon these doctors, both in prosecuting cases and defending them. They are top drawer doctors. They couldn't find anything wrong with Terry Williams mentally. They checked him out and they couldn't find [675] any organic mental illness. They couldn't find schizophrenia, or depression, or psychosis or other mental afflictions. They were consistent in that. Ladies and gentlemen, there is one other thing that they consistently found too. They found a heart. They found conscience. They found a feeling in this man if he could admit he had done some pretty horrible things and feel bad about it. I've always like to believe, or at least convince myself, that if someone came forward and admitted their misdeeds, would receive some kind of favorable consideration. I think you had that in this case of Terry Williams. He's told the doctors that he feels bad about these things, that he doesn't know what's come over him at times. He

has by that indicated that he's got a heart; he's got a conscience. Yes, he can distinguish right from wrong. Yes, he'll keep going back and doing wrong, but he will still feel remorseful and still feel terrible about it afterwards. That is supported and corroborated by other evidence [676] in this case too. You have his statements. Ladies and gentlemen, his statements are everything in this case. His statements which he gave the police voluntarily cleaned up a whole stack of closed files in the Danville Police Department, files that the police department had probably given up some hope of solving on some, not even realizing that there was a crime on others, especially Harris Stone's death. The police would not have gotten this information but for one man, Terry Williams. Terry Williams was the author of his own misfortune in these cases. He was the one that really blew the whistle on himself. Oh, yes, there was evidence that he came back and said, "Look, I want to retract my statements. I want to take these confessions back. I didn't do it. They are nightmares. They are just not right." Ladies and gentlemen, he came back in shortly afterwards and said, "I want to set the record straight. I want to tell you the truth. I did these things." Officer Brown and Officer Evans both testified at length [677] about that. Both of them considered him to be sincerely, and candid and truthful about what he was telling them. He came in and admitted that he had done wrong. As I said, he solved a stack of unsolved cases, including a battery, two batteries, Alberta Stroud and Harris Stone. Ladies and gentlemen, I think you can see this man has a conscience. All right, he's committed these things, and all right, he needs to be punished. I'm not denying that. I'm not saying – don't

punish him. I'm not saying put him back on the streets where he can get out and hurt somebody else or cause somebody else grief or anguish. I'm not saying let him go scott free. I am saying let's spare his life; let's lock him up; let's put him away; let's give him a light sentence; let's get him off the streets; let's get him out of town; let's put him someplace where he's going to be behind concrete, and steel and razor wire, but let's let him live, choose life. Ladies and gentlemen, I don't know that I have said anything really to persuade you. I didn't plan [678] on having to come up with an overwhelming or great piece of oratory at this time of night. I'm sorry if I can't deliver something along the lines of McArthur's old soldiers and Churchill's blood, sweat and tears. But I want to just talk with you, like I said, and tell you why I think his life should be spared. Ladies and gentlemen, the Commonwealth waived its opening argument. They still have their rebuttal and they are going to get in the last say. Mr. Smitherman is going to make a few remarks. Ladies and gentlemen, again I would just respectfully direct you to all those things in his statements and the things he told the police officers where he said, "Yes, I did it, and I need to set the record straight. I need to tell you what happened and to get this off of my chest and do what's right." He's done that much. He's volunteered all of this. Ladies and gentlemen, I'd ask that you prevent him from being a further danger to society, but I'd ask that you do that by sending him to life imprisonment rather than [679] taking his life. Thank you.

JUDGE INGRAM: Mr. Smitherman?

MR. SMITHERMAN: Thank you, your Honor. Ladies and gentlemen of the jury, I would argue all night

if I could convince you what to do with this person who has been convicted of a felony. This man has been convicted of a moral crime. He's been convicted of several other various crimes. I can't defend those. I think they are horrible. I think they're utterly stupid and horrible. However, I'm going to urge you, to see if I can convince you that Mr. Williams has a right to live even though he's done these horrible crimes. You have two choices, life imprisonment or death. That's the only two choices you have. A life sentence, telling Mr. Williams that's he's going to jail for the rest of his life. That's horrible punishment, terrible punishment, the rest of your life you're going to be in jail, or you're going to die in the electric chair. The Court read you an instruction and told you that you had this choice. It said [680] that you had to decide whether the Commonwealth has proved future dangerousness. There's a code, future dangerousness, in our code, meaning that Mr. Williams would be dangerous in the future, would hurt somebody in the future. And that evidence, we presented evidence that he had not had any problems at home, and many of his friends, a number of his friends, did not see any dangerousness in him. But he's got this horrible list of felonies. Even if you do find that the Commonwealth has shown that Mr. Williams is a danger to society and will be in the future, it doesn't mean you have to sentence him to the electric chair. Even if he is shown to be the most dangerous person in the world, he doesn't have to go to the electric chair. The law allows you to decide between the two, life or death. Even if he's shown to be worse than Charles Manson. They want you to consider the entire evidence, all the evidence in the case. And of course the Commonwealth is going to

emphasize the horrible crimes that he's committed. And they [681] are. I can't even begin to tell you how horrible I think both of the crimes that have been brought up the most, the murder and the brutal beating on West Green Street. But consider the punishment, the two worst things that could happen to a person, locked up for the rest of his life or sentenced to death. A life sentence means he is away from the public for the rest of his life. The public's safer, he will there be seen . . .

MR. FULLER: If your Honor, please, I would just like to take the jury out for just a minute.

JUDGE INGRAM: All right, let's take the jury out for a minute.

The jury retired to the jury room, and with the Court, all counsel and the defendant remaining in the courtroom, the following occurred:

MR. FULLER: If your Honor, please, I just don't think that's a fair argument to say that a life sentence means that he will be gone for the rest of his [682] life. And counsel knows that he'll be eligible for parole in about twelve and a half years, and that the Commonwealth can't argue that. I just think it's unfair. I think he can argue, you know, that a sentence of life is a sentence of life, but I don't think he can argue that he'll never be out.

MR. SMITHERMAN: Your Honor, I didn't argue that. I stated they are sentencing him to life imprisonment, . . .

MR. FULLER: You said that he never . . .

MR. SMITHERMAN: . . . that they will be sentencing him to never getting out. And that's . . .

MR. FULLER: That right, exactly.

MR. SMITHERMAN: And that's exactly what they're sentencing him to.

MR. FULLER: Well, that's not true and you know it.

MR. SMITHERMAN: But that's exactly what they're sentencing him to, and he's not eli . . . and whether you are

* * *

[684] The jury returned to the courtroom, and Mr. Smitherman's argument on behalf of the defendant continued as follows:

MR. SMITHERMAN: Ladies and gentlemen of the jury, again, you have a choice between a life sentence or death. You must consider which sentence to give him. Now we're not asking you to reward Mr. Williams. A life sentence isn't a reward; the death penalty certainly isn't. However, we would like you to consider in considering the present offense, as Mr. Motley pointed out before, that Mr. Williams went to the police and told the police that he had done these things. Now again, we're not asking you for any rewards, but certainly there has to be some consideration for honesty, that this man did go to the police and voluntarily state this, made these statements. He was not caught even so far. These crimes are the worst, but that has to be some consideration in [685] your mind because otherwise these crimes wouldn't be solved, Mr. Williams wouldn't be sitting here. Now I have

told Mr. Williams all along that his statements were dumb, and now the defendant is convicted of them. But sometimes conscience is more – whatever you call it – can be dumb practically. Mr. Williams stands before you for sentencing. He wishes you to consider all of the evidence. Again the Commonwealth will emphasize consider all of his past record. It's terrible. But also consider that this man turned himself in, not on one crime but on four. Four unsolved crimes he turned himself in on, that the Commonwealth and the police department would have probably never solved, would not have solved, or it had not solved. I don't know if they ever would have solved them, but had not been solved. He assisted them by saying those things. Ladies and gentlemen of the jury, again I would go on all night if I thought I could convince you. It probably would have been better if I hadn't said anything. But my client, Terry Williams, [686] is asking you through me to consider that he wishes to live. Again, he doesn't deserve any rewards, but life imprisonment is not an award, and he does deserve some consideration. Thank you.

JUDGE INGRAM: Mr. Fuller?

MR. FULLER: Ladies and gentlemen of the jury, certainly I recognize the difficulty of your job. We all have a duty to perform, the defense attorneys, my office, you as citizens who comprise this jury. We'd all rather not be here. Mr. Stone would like to be alive and Mrs. Stroud would like to be a human being instead of a vegetable, but because of the defendant's malicious, vicious and dastardly acts we are here tonight. Now counsel has asked you to believe because the defendant, they say, has a conscience has confessed to these crimes, that that

should be justification to spare his life. He can admit what he did. And he did admit what he did, but that's not unusual. We have a lot of people that deserve and [687] get the ultimate punishment that admit what they did. Of course the defendant found that after he said that he did wished he hadn't, and he retracted it all three days later, he said it was a dream. The detectives testified that on May the 2nd he then admitted that what he had said on April the 25th was true and that what he had said on April the 28th, in which he alleged was a dream, which was what his mother and brother told him, he wouldn't give another written statement or a recorded statement to the police. So you know, he didn't a hundred percent open his conscience up and say, look, I did all of this, I want to be punished for it, I'm sorry. He retracted it. He retracted it because he doesn't want to suffer the consequences of his acts. And also we know from his record that he's not going to quit, absolutely not. And as counsel argued a minute ago, he said he went to the police voluntarily, he wasn't caught, he gave himself up. Of course he was already in [688] jail for something else. It's not like he completely gave himself up. We kind of had him you know, down in the basement. He did write a letter to the police chief, but he didn't sign it. But the detectives charged with investigating this case knew of Terry Williams, and when they found out he was in I block they went directly to him because of the Soloman case. And he denied to them that he wrote this anonymous letter until they more or less proved to him that he did. Then he gave all of these statements on April the 25th. He said he wanted to get it off his conscience. That was commendable. But then three days later he retracted

it all and said it was nothing but a dream, absolutely nothing but a dream. Then he wouldn't give another written or recorded statement. The last written statement that he gave he denied all of this, it was a dream he has a conscience, he feels remorse later they say, but his remorse doesn't do his victims any good does it? [689] It doesn't bring back Mr. Stone; it doesn't make a human being out of Mrs. Stroud, and he doesn't stop doing it. He keeps right on, and on and on. Counsel says, "We're not saying don't punish him," but a few hours ago counsel was arguing that the other people going through the Stone house could have stolen the wallet, that the Commonwealth didn't prove beyond a reasonable doubt the cause of death. Of course you rejected all of that and you found the defendant guilty of murdering Mr. Stone in the commission of robbery. So this business of saying, oh, we're not saying don't punish him, that's now, it wasn't a few hours ago.

MR. SMITHERMAN: Your Honor, I'll object to that. That's a improper argument.

MR. FULLER: I don't think it's improper argument.

MR. MOTLEY: It's two separate stages of the case.

MR. FULLER: That's all right, I can by [690] the history of the case.

JUDGE INGRAM: All right, I think that's a proper argument.

MR. SMITHERMAN: Note our exception, your Honor.

JUDGE INGRAM: All right.

MR. FULLER: Now we come to the punishment stage and counsel suggested that you spare the defendant's life, that you give him life because they say he wants to live. He wishes to live. So did his victims. So did his victims. Ladies and gentlemen, listen, if you will, to the Commonwealth's case proving that the defendant represents a future danger to society. In 1976 he was convicted of armed robbery. The exhibit introduced before you indicates that he got eight years. We know that in 1982 he was out, and we know that on September the 7th, 1982 he was caught by Donald Holland in his mother and daddy's house on South Street. He and another thief had broken into the house, taken out practically the window by taking out an air conditioner, had all type [691] of valuables right in front of the door they were planning to cart off, took Mr. Holland's father's retirement watch given to him by P. Lorrilard, took his mother's wedding ring, neither of which they never got back. Mr. Holland confronted them. He had to fight from his front door, down the steps, out in the yard to restrain the defendant. He had to fight to protect what was left of his parents' property. And what did the defendant tell the psychiatrist, Dr. Manheim? He told him that he was wrongly accused of that offense, that he was just in the house getting some of the belongings of what he thought was somebody else's. Can you believe? How can you believe this so called remorse, and this conscience when he tells such a bare faced lie? Mr. Holland told you that they took the air conditioner out, almost took the window out to get in. Now how in the world do you think you have a right to go in a house and take things when you've

got to take the window out almost to get in? And that's what he'd [692] have you believe. That's what he told the psychiatrist. Mr. Holland had to fight him all the way out of the house to protect his parents' property, and even then they didn't get it all back. We know, according to the Commonwealth's exhibits, that he received eleven years for that offense. We know he was out in 1985. First armed robbery in 1976 and then in 1982 burglary and grand larceny, and eleven year sentence and he's out in 1985. On November the 2nd of 1985 we know from the evidence you have heard today that he went over to Mr. Stone's house about 11:00 o'clock on that night, he asked Mr. Stone, who was under the influence of alcohol, for some money. When Mr. Stone refused to give it to him, what did he do? He first goes in the kitchen and sees about getting a butcher knife. Then he decides to use a mattock. He takes the mattock, he crushes Mr. Stone's ribs, they puncture his lungs, they fill up with blood. He then, while the man is gasping for his last breaths, robs him of his possessions, [693] the produce of Mr. Stone's labor. He said he only got three dollars. We don't know whether there was three or more, but it doesn't make a bit of difference the amount. He killed a man; he murdered a man over a hundred and ninety-four dollars or three dollars, as he said, three dollars. What kind of viciousness is it that would take a man's life for three dollars? It shows you how dangerous this man is. And then while the man was gasping for breath he walks off and goes to the Cabaret for some enjoyment. A conscience? Does that sound like a conscience to you? That's cold bloodied, vicious murder. And this man is left there to strangle to death on his own blood while he goes to the

Cabaret. Does that end it? On December the 4th he goes into Mr. Soloman's house, he sets his clothes on fire. Mr. Soloman opens the door and he goes in, he gets a knife, he stabs Mr. Soloman and then takes his money. Conscience? What good is a conscience if you keep on doing these things? Two psychiatrists [694] testified that he had control over himself, that he knew the difference between right and wrong and that he was not suffering from irrestible impulse. He knew exactly what he was doing. But when he wanted something he was going to take it. If a person said anything he didn't like, or did anything he didn't like, or wouldn't give him what he wanted, that person was in trouble. We know that from Mr. Stone. He had asked Mr. Stone for money, Mr. Stone wouldn't give it to him, he killed him. He wanted some money from Mr. Soloman, so he sets his clothes on fire, and he stabs him and then he takes his money. That was in December, a month and two days after he killed Mr. Stone. Then in February he takes a couple of cars. Then on March the 5th he sees poor Alberta Stroud walking up Main Street. A seventy-five or six year old woman. She told him and told Mr. Stamps that somebody had taken her money that day. She wants to go to Pine Street. He says, "I'll show you." Instead of taking her to [695] Pine Street, he takes up to Holbrook, he turned left and then they go down on West Green Street, which used to be down behind the old George Washington High School and later the Robert E. Lee High School. And what did he do? He said she said some things he didn't like. She said something he didn't like. And because of that what does he do? He beats her to a pulp. He said five times, "I kicked her, I beat her, I kicked her, I beat her, I kicked her, I beat her, I kicked her,

I beat her, I kicked her, I beat her." And beat her he did. He left her with brain damage, all kind of internal injuries that required some surgery that night. The doctors did all they could to save her life, and miraculously they did. But what did they save? She's got brain damage. Both Dr. Whitten and Dr. Perry, her attending physician, say she's a vegetable, her condition is poor, she will not get any better. For all practical purposes he killed her. She's a vegetable. Ladies and gentlemen, he's done [696] all of this since he killed Mr. Stone. Conscience? If this man has got a conscience, we're all in trouble. Is that the end of it? He's been convicted of arson since he's been in jail, last month, August 26th. He's not going to stop. And what else did he tell the detectives? He said it seemed like when someone did something to him, he wanted to get them, something would just come over him. I'll tell you what it was that came over him, meanness. He said he'd see some of the guys down in the jail cell and sometimes he'd just want to choke them. On another occasion he said he saw a guy lying on the bed and he just had an urge to choke him. That's now. We're dealing with a dangerous person, and the fact that he's a dangerous person, besides his past record, is certainly indicated by the testimony of a clinical psychologist and a forensic psychiatrist. Here's what Dr. Ryans said about him. Dr. Ryans says, "There is a high probability that the defendant would commit other serious crimes and that he [697] constitutes a serious threat to society." Dr. Centor testified. Both of these men testified that he was competent, he knew the difference between right and wrong, and he had control over his actions. In fact, Dr. Centor testified that this business of him saying he heard voices

and these dreams and so forth was nothing but malingering. In other words, he's faking. He knows what he's doing. He knows exactly what he's doing. He's asking you to spare him. That's not what he did with his victims. He said things came over him, but none of these things that came over him was substantiated by psychological testing, nor were they substantiated by physical neurological testing, no brain damage. And what did Dr. Centor say about his treat [sic] to society? He said there was a high probability of him committing violent acts which constitute a threat to society. He said that one of the main reasons he reached that conclusion was because he had committed at least two violent crimes in such a short time that that increases the probability of future [698] violent acts. Think about it. November the 2nd, Mr. Stone. December the 4th, Mr. Soloman. March the 5th, Mrs. Stroud. I mean November, December, March, three people. One of them is dead, another one is a vegetable. For all practical purposes she's dead. That's how he left her. Do you really think a man has a conscience who could leave Mr. Stone gasping for breath, and while Mr. Stone was gasping for breath he robs him, takes the produce of Mr. Stone's labor. Mr. Stone was a working man. He was a construction worker. He worked hard for his money. While he's gasping for his last breaths the defendant robs him, walks off, goes to the Cabaret and has a good time. Poor Mrs. Stroud said something, we don't know what, that he didn't like, so he beat her to a pulp. I mean he kicked her and he beat her, and he kicked her and he beat her about her stomach and about her head, and he left her to die. He just walked off and left her to die. A conscience? We think not. We think the evidence indicates

that this man didn't have a conscience. [699] For whatever reason he told the officers, he retracted that. Ladies and gentlemen, society deserves to be protected from someone like this. When this case started yesterday you were all asked the question, if under the proper circumstances you could administer the death penalty. You all answered that you could. We submit, based upon the evidence in the Stone case, what you've heard about this man's future dangerousness, not only the crimes that he's committed, and what the psychiatrists have had to say, that the best way society can be protected from this man is to give him the death penalty. And we say that not because we get any pleasure out of arguing a case like this. It would be so much better if none of us had to deal with such matters, but we do. And we submit that this is a proper case because it would be hard to find a case ever where you are going to see a series of more violent acts over such a short period of time. You think about it. In a ten year period of time, and you've [700] got to substract [sic] the years he spent in the penitentiary, 1976 armed robbery, 1982 burglary and grand larceny, where one of the victims had to fight the defendant to hold him. He was in the penitentiary from 1982 to '85, and he comes out and within months he's killed Mr. Stone, he's stabbed Mr. Soloman, he's made a vegetable out of Mrs. Stroud, and he's committed arson. That coupled with the expert testimony of a psychologist and a psychiatrist that say this man has a high probability of future dangerousness and he constitutes a continuing threat to society. We submit that it would be hard to find a case where there was more compelling evidence and convincing evidence of future dangerousness, and that the best way society

can be protected from this person is to administer the death penalty, and we feel like the facts and circumstances of this case plus the other evidence you've heard justifies that results. These victims cry out for justice, and we submit that the only way justice can prevail is for [701] this man to be given the death penalty. His crimes merit it, his future dangerousness cry out for it. The police have done the best they can with these cases. They have marshaled the evidence. I've introduced the evidence. Now you represent the last link in the chain of justice. Your duty is not an easy one. But we ask you to consider all of the evidence, all of the possibilities of future dangerousness. Think about the victims. They are always forgotten. They are crying out for mercy for the defendant, but how about the victims? They deserve some consideration. They had a right to live just as much as he did. You are not being asked to take the defendant's life. He forfeited his life when he took the life of Mr. Stone and ruined the life of Mrs. Stroud. And we think that is you consider all of these elements that you will feel that the Commonwealth has proven beyond a reasonable doubt the future dangerousness of the defendant and that he deserves the maximum punishment.

* * *

Circuit Court for the City of Danville

[Caption Omitted In Printing]

JURY VERDICT FORM

We, the Jury, on the issue joined, having found the defendant, Terry Williams, guilty of the willful, deliberate and premeditated murder of Harris Thomas Stone in the commission of robbery, while armed with a deadly weapon, and that after consideration of his prior history that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

/s/ Illegible
Foreman

We, the jury, on the issue joined, having found the defendant, Terry Williams, guilty of the willful, deliberate and premeditated murder of Harris Thomas Stone in the commission of robbery, while armed with a deadly weapon, and having considered all of the evidence in aggravation and mitigation of such offense, fix his punishment at imprisonment for life.

_____
Foreman

Circuit Court for the City of Danville

[Caption Omitted In Printing]

Transcript of Sentencing Hearing

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[3] UPON THE CONVENING OF COURT at 9:06 o'clock A. M., on the morning of November 19, 1986, the cases of Terry Williams, #1, 2, 3, 4 and 5, being numbers one hundred eighty-two, one hundred eighty-three, one hundred eighty-four, one hundred eighty-five and one hundred eighty-six on the docket, were called for a Sentencing Hearing, and both the Commonwealth and the defendant announced themselves as ready, and the Court Reporter was duly sworn.

* * *

THE COURT: All right, let the record show the defendant, Terry Williams, is present in the courtroom, with his attorneys, Mr. Motley and Mr. Smitherman. Also the attorney for the Commonwealth and the probation and parole officer who prepared the pre-sentence reports, in these cases. Mr. Motley, have you had an opportunity to review the pre-sentence report in the cases involved in the grand larcenies, the malicious wounding and the arson, and have you and Mr. Smitherman had an opportunity to review the pre-sentence report relative to the capital murder and robbery offenses?

MR. MOTLEY: Yes sir. Both . . . both reports have been reviewed with the defendant. I don't know of anything that needs to be made, as far as a correction or an addition. As far as the part of each report that deals

with Mr. Williams' prior employment history, he [4] indicated to me that as far as his job at the M. A. Stewart Construction Company, he was laid off following a knee injury, that he sustained on the job, and that was the circumstance for his leaving that particular employment. Otherwise, I think both reports are in good order.

THE COURT: All right, the pre-sentence report will be marked as Commonwealth's A, in each of the cases. All right gentlemen, do you have any evidence you care to present?

MR. MOTLEY: None from the defense, sir.

* * *

[21] THE COURT: All right, Mr. Williams, on the conviction of grand larceny, under Indictment No. 1, the Court sentences you to six years in the penitentiary. On Indictment No. 2, for grand larceny of the automobile, the Court sentences you to six additional years. Mr. Williams on the malicious wounding of Alberta Carter Stroud, the Court is of the opinion that for that offense, you should receive the maximum punishment of twenty years in the penitentiary. I think that the evidence in that case establishes beyond any doubt that that was a totally unwarranted, merciless beating, and that certainly the maximum punishment is warranted, upon that conviction. Upon your conviction of arson, as charged in Indictment No. 5, the Court sentences you to one additional year in the penitentiary. The matter then becomes as to what is the appropriate sentence on the capital murder, which you were tried and convicted by a jury, on September the 30th, and at which time the jury returned a

verdict, after having found you guilty of the wilful, deliberate and [22] premeditated murder of Harris Thomas Stone, in the commission of robbery, while armed with a deadly weapon . . . found that after consideration of your prior history, that there is a probability that you would commit criminal acts of violence, that would constitute a continuing serious threat to society in the future . . . they made that determination after having considered the evidence in mitigation of the offense. That jury unanimously fixed your punishment at death, after considering all those factors and being convinced beyond a reasonable doubt that that was the proper verdict in the case. Accordingly, the Court thereafter ordered a post-sentence report, in accordance with Code of Virginia, Section 19.2-264.4. The Court has considered that post-sentence report, Mr. Williams, and of course, it contains a great deal of criminal history, which I think that no one could ignore. As a juvenile, it included ten felony offenses . . . it contains evidence that upon your attaining adulthood, that you were convicted of a petit larceny offense, and served a long jail sentence for that, but was placed on probation. While you were on probation, you committed an armed robbery and were sent to the penitentiary. After serving a portion of that sentence, you were paroled, and while again out, you began to get yourself involved in further criminal activity. In this Court, in 1983, you were again [23] sentenced to the penitentiary, upon convictions of burglary and grand larceny, and thereafter paroled to this jurisdiction, in 1985. While you were on parole, from that time, you have been found guilty of petit larceny, the two grand larcenies for which the Court has just sentenced you, the additional offenses of malicious

wounding, and arson, which occurred after this, as well as the capital murder and the robbery of Harris Thomas Stone. The Court is, therefore, of the opinion that the post-sentence report indicates that the sentence which has been imposed upon you, by the jury, was both appropriate and just. It appears that the jury was certainly justified and correct, in finding that there is a probability that you would commit crimes of a serious nature, because you have a history of traditionally doing that. After the capital murder involved, there are at least two other violent crimes, which you were involved, not to mention the other things that have occurred thereafter. Therefore, it's the judgment of the Court, taking all these matters into consideration, that the death penalty which the jury recommended in its verdict of July the 30th (September), is appropriate . . . it's proper . . . it's just . . . it is the punishment which should be imposed. Accordingly, it's the judgment of the Court that upon the conviction and finding of the recommendation of the jury, in the [24] capital murder case, the Court does sentence you to the death penalty for this offense. In accordance with the Code of Virginia, Section 53.1-232, the Court shall set the execution for May the 1st, 1987. Of course, the Court has previously imposed the seven years on the robbery, at the time of the sentencing.

MR. FULLER: I just . . . I think you said July the 30th, but it was September.

MR. MOTLEY: Yes sir.

THE COURT: Excuse me . . . September the 30th. Mr. Williams, the Court is of the opinion that the sentences which the Court has just imposed upon you,

are justified and warranted, predicated on your criminal history. For a man thirty-one years, you have amassed a substantial criminal record, and not only involving many crimes . . . involving property, but crimes against the person, including that of rendering one person into a state of unconsciousness, for life, and the taking of a life of another. Therefore, the Court is of the opinion, the sentence is proper. It is just. It is appropriate, in this case.

* * *

Circuit Court for the City of Danville

[Caption Omitted In Printing]

Transcript of State Habeas Trial

* * *

[16] EVERETT L. MOTLEY, JR. Was called as a witness, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. POWERS:

Q Mr. Motley, could you spell your name for the court reporter, please?

A My full name is Everett, E V E R E T T L. Motley, Jr. I have always gone by E. L.

Q And Mr. Motley, are you appearing today pursuant to a subpoena?

A Yes, which I understand was issued by the petitioner.

Q And did that subpoena ask you to produce certain documents from your file?

[17] A Everything I have except for some duplicate copies of briefs and transcripts, which I assume you already have, is right here with me.

MR. POWERS: Your Honor, could I approach the witness and look at those materials?

THE COURT: Yes.

Q Mr. Motley, are you taking any medication today?

A No.

Q And is there any physical or mental impairment that would impede your participation in this proceeding and your full testimony?

A No.

Q I would like to just get on the record some background questions. What is your present address?

A 11024 Foresttrace Way, Glen Allen, Virginia.

Q Is that in the Richmond area?

A Yes, it is in Richmond, in Henrico County.

Q And by whom are you presently employed?

A I am employed by General American Corporation of Pittsburgh, Pennsylvania.

[18] Q What are your job duties with that company?

A I am a title underwriter for them with the Richmond, Virginia office. I am a title insurance agent, and I handle real estate title underwriting matters.

Q How long have you been located in Richmond?

A Five years in October.

Q And before that, aside from law school or college, you were born and raised in Danville?

A That is correct.

Q Are you presently practicing law?

A No.

Q And when did you cease practicing law, Mr. Motley?

A 1989.

Q And the reason?

A I had several major health problems, led to some professional problems also, and I got out of the active private practice of law in 1989.

Q And is your license to practice law in a status of indefinite suspension?

A I am still on disability status.

Q And has it been indefinitely suspended [19] by order of the state bar?

A Yes, until I apply for reinstatement.

Q Now you are a 1979 graduate of the University of Richmond law school?

A That is correct.

Q And when you after graduating from law school returned to Danville, did you join a firm?

A Yes.

Q What was the name of that firm?

A Meade, Tate and Daniel.

Q And how long did your association with that firm last?

A I was with them approximately two years, and I had also clerked for them when I was in law school.

Q What happened after your two-year tenure with that firm?

A I went into private practice on my own.

Q Was that solo practice?

A Yes.

Q And that was for the period of 1981 to 1989?

A That is correct.

Q As a solo practitioner, did you have any full time support staff such as a receptionist or [20] secretary?

A No one full time, no, sir.

Q How did you handle your filing, typing, and things of that nature?

A Well a number of things I had to do myself. I had some people that helped me part time, no one full time. And my wife also helped me when she could. A lot of it I just had to do on my own.

Q During the period that you were in solo practice, what portion of your work was the result of court appointment?

A Probably about – it varied. It would normally run anywhere from twenty-five to fifty percent.

MR. POWERS: Your Honor, I would request that Mr. Motley be considered an adverse witness under the Virginia Code so I can ask leading questions. Is that permissible?

THE COURT: All right, I think that is appropriate.

Q Mr. Motley, when were you appointed to represent Terry Williams?

A I don't recall exactly; there was an order entered.

[21] Q would that be, does July 8, 1986 sound right?

A If that is what is on the order.

Q Would you agree that you represented him not only through the trial stage, you did that; right?

A That is correct.

Q But you also represented him during direct appeal?

A You mean to the Virginia Supreme Court?

Q That is correct?

A Yes.

Q And the record reflects that the Virginia Supreme Court decision was issued in early September 1987. Does that sound about right?

A Again I don't recall exactly. If that is what is on the Supreme Court order, I assume it is correct.

Q Now Mr. Motley, have you ever – you said that you had some health and professional problems. Were your health problems related to depression?

A Yes, they were.

Q And I would like to ask what your symptoms were while you were depressed.

A Well if you will recall, I outlined [22] those at length at a deposition back in January.

Q Right.

A As best I can recall, back during the late spring, early summer of 187, I was having difficulty sleeping, I was having a lot of difficulty concentrating, handling work, making decisions. I think I got very frustrated with a number of things.

My wife would probably also tell you I got very withdrawn, very aloof at times. And I just . . . I didn't feel particularly good, but I didn't know what was happening or what the cause was.

Q And did those symptoms include difficulty in concentrating?

A Yes.

Q And procrastination?

A Yes.

Q And difficulty in prioritizing matters?

A At times, yes. Some things were easy to prioritize, other things were difficult to. Other things I didn't even want to approach.

Q Would it be fair to say that you had an overwhelming sense of despair during that period?

A I don't know so much as despair but just frustration. Frustration, maybe a feeling of helplessness, that type of thing.

[23] Q Mr. Motley, would you say that this depression occurred all at once, for instance, like a heart attack or was it something that was a gradual process?

A I would say it was probably something gradual. You don't generally with that disease have a date you can pinpoint and say, well, this was the day I had a heart attack or this was the day I fell down and broke my arm or whatever or the day I had a stroke. It just . . . It comes, you can sense something is wrong, but you can't really put your finger on it.

Q And isn't it true that you had, prior to 1987, you had never been treated or diagnosed for this illness?

A That is correct.

Q So that the symptoms that you were experiencing were not something that necessarily brought alarm bells or that you knew what was happening?

A Well I could tell something was wrong, but I didn't know what.

Q And so it would be fair to say that this was an injury of a thousand cuts in the sense that it was cumulative and gradual?

[24] A That might be one way to describe it.

Q Now you first saw an internist in June of 1987, Dr. Gaddy; is that correct?

A I believe that time frame would be right, yes.

Q And you told Dr. Gaddy that you were fatigued and depressed, didn't you?

A I don't think I told him I was depressed. I told him that I wasn't feeling particularly good, that it had been a while since I had had a physical, and that there

were times I felt out of sorts or fatigued. I think I told him I was fatigued. I don't recall telling him I was depressed.

Q Was Dr. Gaddy your regular physician? Had you had a longstanding patient-client relationship with Dr. Gaddy?

A No. My previous physician, family physician, had been Dr. Henry Bourne. Dr. Bourne was an elderly doctor, he had retired sometime about that time or maybe prior to that.

And Dr. Gaddy was a very highly regarded doctor, his partner had treated my mother on occasion, and I went to him because I knew he was a good doctor, and also I wanted a good internal [25] medicine doctor for a physical.

Q So you told him that you had fatigue and lack of energy?

A I believe so, yes.

Q And did you also tell him that that had been occurring for about six months?

A I really can't recall.

Q Did you, seeing that Dr. Gaddy was not your regular doctor, did you fill out a questionnaire that oftentimes is kind of an intake questionnaire for a doctor listing your symptoms and your prior medical history? Do you recall that?

A I really can't recall.

MR. POWERS: Your Honor, may I approach the witness?

THE COURT: Yes.

Q There has been an exhibit that has been previously marked as Exhibit 13, which is records from Dr. Gaddy that we have received through subpoena, Mr. Motley.

A All right.

Q And I am going to hand you what is part of Exhibit 13, which states the complaint. And does that refresh your recollection about the length of period of time that you brought to the attention of [26] that doctor?

A I really don't recall, and this is the first I have seen of it.

Q Now would you have any reason to believe that the doctor's records which state fatigue and lack of energy for about six months would be incorrect?

A No.

Q Mr. Motley, also as part of those records, you did fill out a questionnaire, and I am going to show you that. That is again Exhibit 13, is that your handwriting?

A Yes, that is my handwriting.

Q And I am going to direct your attention to Page 2, which is a series of questions. Did you circle in response to questions regarding your symptoms, were you the person who was circling yes and no?

A Yes.

Q And did you circle the box saying depression?

A Yes, I did.

Q And you also circled extreme tiredness and weakness?

A If that is circled on there, yes.

[27] Q And depression and anxiety?

A You just asked me that.

Q Frequent and severe headaches?

A Yes.

Q Now Dr. Gaddy was not trained in psychiatry, was he?

A I don't think so, no.

Q So he was basically an internist and family doctor?

A Yes, M.D., internal medicine.

Q So he did a physical and tried to ascertain if there were any physical ailments that could account for your symptoms; correct?

A That is right.

Q But you didn't see a psychologist or a psychiatrist who was trained in things like depression until September of 1987; isn't that correct?

A That is correct.

Q And the first doctor that you saw was a psychologist Sam Fletcher?

A That would be right.

Q Now by September of 1987 you were in, is it fair to say that you were in pretty bad shape?

A I would say so, yes, looking back on it, [28] that is probably a good way to put it.

Q And were you urged by your wife and close family friends that you really needed to see a mental health expert for some counseling and for some therapy?

A Yes, and at that point I realized it myself.

Q And that was what precipitated seeing Dr. Fletcher in September of 1987?

A Yes.

Q And when Dr. Fletcher examined you, did Dr. Fletcher tell you that you were suffering from depression?

A As best I can recall, yes.

Q And did he also recommend, was he concerned that there was a possibility of some unfocused suicidal thoughts?

A Really, no. If he had those concerns, he didn't express them to me. As I recall my conversation with him, the main thrust of it was, You are exhausted, you can't stay on top of anything right now, for nothing else, get some rest.

Q And did he recommend that you be hospitalized?

A Yes.

[29] Q Did you act upon his recommendation?

A Yes, I did.

Q And where were you hospitalized?

A He referred me to a hospital in Roanoke, a doctor in Roanoke, Dr. Hartman.

Q And that was a psychiatric center?

A Yes, part of Lewis-Gale hospital.

Q And how long were you in Lewis-Gale?

A Probably several weeks.

Q After you left Lewis-Gale, were you under the continued treatment of psychiatrists and psychologists?

A For a while, yes.

Q And did Dr. Fletcher continue to see you and treat you?

A Yes, he did.

Q He is a psychologist, correct?

A That is right.

Q And did you also have psychiatric care as well?

A As best I can recall, yes.

Q And Dr. Hartman was a psychiatrist, wasn't he?

A Dr. Hartman is a psychiatrist.

Q Did he prescribe medication for you?

[30] A Yes, he prescribed Doxepin for me.

Q What is Doxepin as best you know?

A As best I know it is like a first generation anti-depressant prescription medication.

Q So beginning September 1987 you began taking medication and also you were undergoing therapy?

A That is correct.

Q Seeing a psychologist and a psychiatrist?

A That is correct.

Q Later did you see Dr. Ashby?

A Yes.

Q In Danville?

A Yes.

Q And he is a psychiatrist, too?

A Yes, he is.

Q And when did you move to Richmond?

A October of 1990.

Q And were your problems with depression continuing at that time?

A I was still under treatment.

Q And did you see Dr. Beshara in Richmond?

A Yes, I did.

Q He was a psychiatrist?

[31] A Yes.

Q And then later Dr. Shield?

A Saw Dr. Shield.

Q And did your medication change during this period? Did it remain Doxepin or were there others?

A It changed. They had had to try something else for me besides Doxepin because Doxepin wasn't really helping me. It is a drug that has a tendency to – in some people, some people it is obviously highly effective.

But in my case it was making me lethargic, sometimes even more fatigued. It has a tendency to slow you down, to put weight on you. I was getting a lot of the side effects, adverse side effects that Doxepin can create, but I was not getting a lot of the beneficial aspects that I should have been getting from it. So they tried another medicine, which I do not recall. And then tried Prozac, which was the most successful.

Q For how long a period were you taking Prozac?

A I was on Prozac I guess probably for, probably the better part of two or three years. I can't recall the exact time frames.

[32] Dr. Shield about sixteen months ago felt I had progressed to the point where he wanted to see if he could wean me off medication and let me try getting by without medication.

And that has been I guess maybe about sixteen or so months ago, and so far things have been successful. I haven't had to go back on it.

Q Well that is good. So Mr. Motley, would it be fair to say that from 1987 until early 1994 thereabouts you received the benefit of medication for your depression?

A Yes. Dr. Shield let me get off it sometime during 1994, I can't remember the exact date.

Q Now I would like to go back to, you testified a moment ago that you had no reason to disbelieve Dr. Gaddy's medical records that your complaint in June of 1987 was fatigue and tiredness and depression for about six months.

A (Nods affirmatively.)

Q Would you agree with me that certainly your depression did not begin the day before you stepped into Dr. Gaddy's office?

A I am sorry, could you rephrase the [33] question.

Q Would you agree with me that it is a fair statement that your depression certainly didn't begin in the week before you saw Dr. Gaddy in June of 1987, that there was some period of time before you sought treatment that you were suffering from depression?

A Well, I think I have already testified that it is something you can't put a finite beginning or ending date on.

Q Right.

A I knew something wasn't right, but I am not a doctor, at least not a medical doctor, and I knew I was not, for whatever reason – depression, indigestion, whatever, I wasn't feeling up to snuff. And for those reasons I decided I better get a physical.

Q Right. But let's have no mistake about it, I mean, looking back on it now, you have no reason to believe that your tiredness and fatigue and depression that you list in your symptoms was not depression now that you know what it is?

A In retrospect, yes.

Q And in fact, you saw other doctors. For instance, Sam Fletcher, the first psychologist that [34] you saw in September of 1987 who recommended your hospitalization, isn't it true that you told him that you had been suffering depression off and on for a number of years?

A Well I think I had told him that in retrospect I had some periods in my life that may have been depressive episodes and I didn't realize it.

I had had some times probably all the way back to my senior year in college, maybe even before, I don't know, I don't know.

All I know is, I had gotten from when I was born in November of 1953 up to 1987, and there had been disappointments, there had been the usual travails, there had usually been the little victories and little defeats and sometimes big victories and little defeats – big defeats, rather – that make up life for all of us.

But I had never had anything quite like what was happening to me at that particular time in the late summer, early fall of '87.

Q Isn't it fair to say that at that time things had from a health perspective and from a professional perspective had begun to spin out of [35] control and fall apart?

A Yes.

Q But that before the actual falling apart, you have told a series of doctors that you had been depressed for a number of years; correct?

A I think I told them that looking back I may have had what was depression in retrospect.

Q And in fact you told Dr. Hartman that you had been depressed, again when you saw him at Lewis-Gale psychiatric center, that you had been depressed for a two-year period; isn't that correct?

A It is possible. You are asking me something from a conversation almost nine years ago.

Q Would you have any reason to disbelieve the records from your stay at Lewis-Gale Psychiatric Center?

A No, I wouldn't.

Q And if they reflected that you had told them that you had been depressed for two years, you wouldn't dispute that statement today, would you?

A No, I wouldn't dispute it. I was also a very sick man when I finally did get to Roanoke.

Q I understand that. Now early in your testimony, Mr. Motley, you said that you had stopped practicing law for a variety of reasons, health and [36] professional. This depression did affect your work, didn't it?

A Yes, it did.

Q And ultimately you decided that practicing law with your medical problems and struggles, that it was incompatible with that illness; correct?

A Practicing law is stressful if you are completely one hundred percent healthy. And I think I may have told Dr. Shield when I first saw him that I had just completely

burned myself out in private practice, especially the heavy trial practice that I was doing and had been doing.

So to answer your question, yes, I think everything got to the point where in my position as a solo practitioner in Danville, Virginia, the strain of practicing law, especially a litigation practice, got to be more than my health and wits could carry.

Q And right before you were hospitalized in 1987, you were distressed because you had failed to mail something in or attend to a matter in your law practice which was a costly item and distressed you; is that correct?

A It was a potentially costly item. It [37] was a filing with the State Corporation Commission that I missed that could have cost my client a considerable amount of money. Thankfully it didn't, but I didn't know that at the time, and I was very upset about that, yes.

Q And there is really no question that your depressed state that you testified to this morning was directly linked to you not making that filing in a timely fashion? Would you agree with that statement?

A I would say so, yes.

Q And there were other complaints that were made in the mid-1980's regarding your practice of law, isn't that correct, by clients?

A Yes.

Q I am going to take three matters, one at a time.

A (Nods affirmatively.)

Q And the first one was your private reprimand by the Sixth Committee of the Virginia State Bar involving the Cary Scearce trust account. Do you recall that?

A Yes.

Q And when you received that private reprimand, it was because the Court had concluded [38] that you had failed to handle those trust accounts properly; isn't that correct?

A It was failure to keep proper records.

Q And you had failed to deposit Social Security checks in a timely fashion?

A Yes.

* * *

Q In addition to failing to deposit Social Security checks, you also lost a number of checks, didn't you?

A There were some items lost. There was [39] reimbursement, complete reimbursement made to the estate.

* * *

Q There were also checks that bounced because of insufficient funds in the account; isn't that correct?

A Yes. As I testified at length at the deposition, I didn't manage it as I should have, with the diligence that I should have.

I admittedly procrastinated on a number of things that should have been done with it. And as I told you at the Attorney General's office back in January, I am probably the world's sorriest bookkeeper, still am. And all of that came to play in that and another problem.

Q And you have testified that procrastination was a problem and also ability to pay attention to details; isn't that right?

A That is right. As I told you, I am not an accountant.

Q Or to meet deadlines?

A That was also a problem as well.

[40] Q Now you handled that trust account from 1984 to 1986?

A No, I really handled it I think from 1982 to 1986. The problems blew up around I think '86 –

* * *

Q When the hearing for the Sixth District Committee – this is not in evidence – of the state bar, in other words there was a hearing prior to you receiving the private reprimand; correct?

A As I recall, it was in '86.

Q And would that have been early '86, mid-86, summer of '86, late '86?

A I don't recall the exact date. May have been late '86.

Q Do you recall in point of time how close it was to you receiving the private reprimand?

A I don't recall.

[41] Q Would that have been in a matter of weeks?

A Probably.

Q And would you agree that being brought up on complaint before the bar is a stressful event in and of itself?

A Yes.

Q And you received that private reprimand on the same day that Mr. Williams received his sentence of death, didn't you?

A I really don't recall.

Q But the record would reflect what those dates were?

A You have the records, I don't.

Q There was also a public reprimand regarding a divorce and property matter; correct?

A That was correct, yes.

Q I am going to go quickly on this, that you had a one-year period to prepare a deed as part of a divorce settlement, property and divorce settlement; isn't that correct?

A I don't recall the exact time frame. There was supposed to be a disposition of property pursuant to a divorce.

Q And you failed to attend to that; is [42] that correct?

A That is correct.

Q And again that was procrastination?

A It was. There were also some – there were some problems with the divorce, and there was also a period

where things kind of got put on hold because the parties were trying to get back together. They did not reconcile, but they talked about it for a while, and they wanted kind of for things to . . .

Q But they filed a complaint and were quite upset because deadlines regarding the preparation of that deed pursuant to disposition of the property was not attended to?

A As I recall, yes.

Q And finally your license to practice law was suspended for a hundred and twenty days in May of 1989; correct?

A That would be right.

Q And again that was for failure to handle trust funds properly?

A It was chapter and verse of what I told you about a few minutes ago, and the same thing that I answered your questions at length on back in January.

[43] Q So that you were unable to attend to the details?

A Exactly.

Q To monitor the accounts, to meet deadlines; correct?

A That is correct.

Q And you procrastinated?

A That is correct.

Q And that led to the suspension of your license for a hundred twenty days?

A That is right.

Q And the Virginia State Bar noted that that inattention to that trust account matter encompassed virtually from 1982 up to 1989; didn't it?

A I don't recall that part, no.

Q But whatever it says, it says in the decision?

A Yes.

Q Now Mr. Motley, isn't it true that procrastination, inability to pay attention to details or to meet deadlines were some of the same symptoms that you experienced in your depression?

A Yes, I think that is part and parcel of it.

[44] Q And isn't it also true that when you had therapy with your doctors after you finally sought treatment in 1989 that you told your doctors that the complaints which had led to the discipline at the bar were related to your depression?

A Yes.

Q Because in your depressed state, looking back on it now, you were not able to attend to those matters, details, and keeping account of those records; isn't that correct?

A Well hindsight is always 20/20. In looking back, I can see where it played into it.

Q Now Mr. Motley, we are here today, as you know, because Mr. Williams, your client, is on death row, and this is a habeas proceeding; correct?

A That is correct.

Q And isn't it true that the burdens and responsibilities of handling a capital murder case are much more difficult and immense and time-consuming than it would be for a simple trust account?

A Well I don't know. I don't know that I would go as far as saying that. I don't know beans about accounting, but I think I have a pretty good handle on approaching criminal cases.

[45] Q So but would you agree with me that again looking back on it because you had not sought treatment at that time, that your depression has to be taken into account as explaining some of your actions or inactions during the time that you represented Mr. Williams?

A You mean during the Williams trial?

Q Yes, sir.

A No, because I had given the Williams case priority. Something you haven't asked me, during this time, even when things professionally were going downhill, I was trying to concentrate as much as I could on the criminal part of my practice because, first of all, I felt I had a duty to the Court.

Now that is not to say I didn't have a duty to the Court in anything else, I don't put that spin on it. But I felt like I had to give the criminal cases top priority, because first of all they had priority on this docket here.

And I had someone's freedom or property or in Mr. Williams' case, his very life on the line. And part of the problem I got up a tree on some of my civil files, including the two trusts and the divorce, was because I was having to put extra [46] time and even more with just myself being really the only person in my office, on criminal matters, on defending criminal cases, getting them prepared, getting them tried, and then getting through the sentences, and in many cases the appeals thereafter.

Q Mr. Motley, I can appreciate the difference between criminal and civil, and I also have no doubt that you did the very best you could.

But if depression was affecting your ability to meet deadlines and your attention to things like keeping accounts and depositing checks and having checks bounce, wouldn't you agree with me that looking back at it now that this would also account for some of your actions or failure to take certain actions during your representation of Mr. Williams?

A I really –

MR. CONDON: Judge, that is too general.

THE COURT: I am going to sustain the objection.

Q Well let me just see if I understand this, Mr. Motley. Are you saying that you were depressed and unable to attend to details when it came to civil matters, but you had no problems when [47] it came to criminal matters?

A Generally I was able to handle criminal matters all right.

Q So you were able to compartmentalize your depression in that respect?

A Well let's not say that I felt great and hunky dorey every day I came to court to try a criminal case. But at the same time, there were some cases I could approach, I could sit down, I could do what had to be done, whether it was write a letter, file a motion, prepare bankruptcy schedules, get a will drafted, show up in court. There were other cases I would get nauseated if I got even close to the file.

I am not a doctor, I can't crawl inside my head and say here is what happened on August 6, 1987 at four o'clock and this is why it happened. You know, I don't know, I don't know.

I do know things started spinning out of control personally, health-wise, and professionally in the summer of '87. And that was what I had to get help for.

You know, you can stretch it, pull it, put any kind of spin on it you want to. Some things I could do fine. I was able to get my [48] criminal work done, was able to get my bankruptcy work done, but other things at the office slid, yes, and that is what I had problems with.

Q Well Mr. Motley, maybe at this point we can turn our attention to the trial and maybe that will shed some further light on this.

In preparation for when you were appointed for the Terry Williams capital murder case, you were acting in a sole capacity for a number of months; isn't that correct?

A More years.

Q No, I mean when you first appointed to represent Mr. Williams in July of 1986, you didn't have co-counsel until fairly late in the process?

A It was just me at first. I don't recall how much later on Mr. Smitherman came in the case.

Q Did you read any books or articles or any special preparation for this trial, this capital murder trial?

A Excuse me?

Q Did you read any books or articles or any special preparation for this trial when you were appointed?

A As I recall, I think maybe one thing I did was pull out the Johnny Watkins file. I had [49] worked on that case previously, which was also a capital murder case. In fact it was two capital murder cases, because there were two robberies and two murders in that case.

As I recall, I think I pulled those files out, went over things in that, looked at the pleadings, kinds of motions that would have to be involved. I think as far as special preparation, each case has its own challenges.

Q Right. Did you confer or contact any lawyers prior to the time about the Terry Williams capital murder trial before Mr. Smitherman was appointed as co-counsel?

A I really can't recall.

Q Did you contact any resource groups such as the Virginia Death Penalty Resource Center or any of its predecessors or the NAACP or any resource group for assistance?

A As far as specific advocacy groups or legal defense groups, no, I don't remember anything on that. I think I had some contact with them during appellate proceedings, but not at the initial stages, no.

Q Now you noted that you had done a prior capital murder case?

[50] A Two.

Q And you had also done non-capital murder cases?

A That is correct.

Q And serious felony cases?

A That is correct.

Q What in your view is the difference as far as preparation between a capital murder case and a non capital murder case, if any difference?

A Well really in many respects I don't know that there is all that much difference. Criminal cases pretty much boil down to one issue, did you do it or not. And if you did do it, did you do it to the extent that the state claims he did?

In other words, is there a lesser offense involved or are there any mitigating or aggravating circumstances. You have that in any criminal case, whether it is an assault case or a robbery case or a homicide case.

It is not like a civil case. Civil case is like an algebra problem, there are a lot of places an algebra problem can be missed or go wrong.

A civil trial can go wrong, you can lose it in the discovery part, you can lose it in [51] pretrial, you can lose it on liability, on damages.

Most criminal cases aren't – they are multi-faceted, but in a different way. It is kind of like lacrosse and field hockey. They are the same game with the same goals, but they are obviously two different sports. And I think that kind of is the same situation here.

I don't know that there is any – a capital case, yes, it has its own challenges, it has things that have to be looked at, research done. But I don't know in its own way just academically speaking you approach it all that completely differently from the way you do any other serious felony case.

Q Did this particular case with Terry Williams pose unusual difficulties or problems?

A The biggest and most difficult problem was Terry was complaining of mental infirmities, things that would suggest emotional or mental problems or instability that just was not borne out by the doctors who examined him.

The biggest problem was that Terry was claiming that he was having dreams of visions of voices or whatever, apparitions, that would lead him to believe he had been implicated in [52] these crimes.

None of the mental health professionals, Dr. Ryans, Dr. Centor, Dr. Mansheim, I don't think anybody that examined him came up with anything to verify that or even to give us anything much to hang our hat on as far as either an insanity defense or anything like that or really even mitigating circumstances.

That was the big challenge, the big difficulty, the big frustration, for lack of another way to put it, with Mr. Williams' case.

Q I am going to get to that, your work with those experts, in a moment. But how much work did you put into this case prior to the appointment of Mr. Smitherman as co-counsel? How far along were you?

A Things had gotten pretty far along. I had already I think talked with the police and talked with Mr. Fuller and a couple of his assistants at length, and also of course talked with Terry.

And I had reviewed I think some of the scientific reports that were back. I was already well underway on it. I can't tell you to what degree or what.

Q Would you agree that you acted as lead [53] counsel in this case?

A Yes. I had had experience with two other capital murders. And one, the Price case that – it was not a capital case in Virginia, but it was very difficult murder case.

And Mr. Price was charged with another murder in North Carolina for which he was subsequently convicted and is now on death row in Raleigh.

Q So by virtue of your earlier appointment in the case and greater experience, that would explain your lead counsel role?

A Well, yes.

Q Was there an agreement to split the work up in any agreed-upon fashion between you and your co-counsel Mr. Smitherman?

A Yes.

Q And tell me how that was done.

A Well, I can't recall exactly how we split it or who did what, it has been just too long a passage of time.

But I think each of us undertook certain areas of preparation for the trial. I think we each researched particular points of law in the case.

[54] I remember meeting with him at times when we would say well you do this, I will do this, you work on this, I will look at that. I can't recall for you exactly how we split it, but we did divide up the work.

Q And in dividing up the work, was one of the goals there efficiency in the sense that you both wouldn't cover the same ground?

A We wanted to avoid I think following each others footsteps. And also we just wanted to – we wanted to try to cover as much ground as we could.

And Mr. Smitherman – Mr. Smitherman also had obviously support staff at his office that I didn't have at mine. So if we had anything that had to be typed or anything of that sort, we drafted, and then it would go to his secretary.

Q You each handled separate witnesses in either direct or cross during the trial?

A As I recall, yes.

Q In other words, you didn't double team a particular witness?

A Well under Virginia criminal procedure and just under the rules of court, there is no tag teaming of witnesses.

[55] Q Right.

A Normally one lawyer questions one witness.

Q And would it be a reasonable conclusion that if you handled the particular witness at trial that you also handled the preparation and investigation regarding that witness, as well, primarily?

A Primarily, but I wouldn't etch it in stone. Sometimes just for a break one of us would maybe take the other's witness. I mean, we knew what we wanted to ask them, we knew what we were trying to get out of them.

Most of the time, though, as I recall, it followed that whoever had worked up things on that point, that person would handle the examination.

Q How many times did you speak to Mr. Williams?

A I can't recall. I talked to him at times, Mr. Smitherman talked to him at times, and we talked with him together.

Q And when you talked to him, would it be your practice to – or when you talked to him for an extended period of time, would you make notations in [56] your file?

A Sometimes I would, depending on what I was talking with him about. It has been a long period of time, and I really don't recall.

Sometimes it was just to talk to him to try to tell him, Hey, here is what is going to happen next. And we have been over to the police department, we have talked to detectives, and here is what they told us.

Q Did the police report, the initial police report regarding the death of Mr. Stone, the decedent in the case, were you privy to the police report that was prepared by Officer Poteat?

A No, I don't think so.

Q Let me just, because I –

A Normally police reports aren't discoverable.

Q Right.

MR. POWERS: Your Honor, with your permission we have stipulated to an Exhibit 1, which is a police report from Officer Poteat dated 11/3/85.

Q And I am just wondering if that refreshes your recollection, if that is a document that came to your attention?

[57] A No.

Q And when you say no, since those normally don't come to your attention, in looking at that, you can say no I didn't see it?

A As best I can recall, no, I did not see that at the time of the case.

Q Mr. Motley, did you go to, I believe that both the defendant and the decedent both lived on Henry Street in Danville?

A That is correct.

Q And did you go to Henry Street and systematically interview the residents of that street and that neighborhood?

A No, I didn't.

Q Did you ever go to the home of – Terry lived with his mother and an extended family on Henry Street. Did you go to that home and interview in the home setting the members of the Williams family?

A As I can recall, any interviews I had with his family were either in my office or over here at the courthouse.

Q So you never went to Henry Street?

A No. They probably would have thought I was an ABC agent or a process server.

Do you recall the witnesses or potential [58] witnesses that you interviewed in preparation for the trial?

A I can't recall.

Q Would that be reflected in your file?

A I don't know. On the file, the file has gone out to a lawyer in Mecklenburg, lawyer in New York, Mr. Smitherman at the time of the case, a good bit to your office, and a good bit of it my wife sent out I think to a lawyer while I was in the hospital or thereafter. So I can't really recall.

Q How did you, the witnesses that you did interview in preparation for trial, can you recall how you selected the individuals who you would speak to?

A No, I can't recall.

Q There were experts that were appointed by the Court in this case. There were several psychiatric experts; right?

A That is correct.

Q And psychologists and psychiatrists. Dr. Centor is a doctor at Central State, and he was an expert appointed by the Court; correct?

A That is correct.

Q Was he appointed to assist the defense?

A He was appointed to evaluate Mr. [59] Williams. I think one of the first things that was filed as far as a pleading or a motion, especially after Mr. Williams had spoken at length about having dreams or visions or whatever, the first thing was to have psychological examination of Mr. Williams.

In not just capital cases, but in almost any criminal case at that time, the accused would be examined at Central State by one of the doctors in what was called the forensic unit down there.

It was a part of Central State Hospital that was geared specifically to work in forensic psychiatry. And part of its task was to evaluate persons charged with crimes or evaluate persons for court cases in Virginia.

Q I realize that any expert is going to give their professional and neutral opinion in the sense of when they do their evaluation and diagnosis, but what I want to center on is, did you view Dr. Centor as somebody who was appointed to assist you in preparation for trial and to assist you in the preparation for the defense of Mr. Williams at trial?

A Well, not really. I had had cases where Dr. Centor had saved my case. For instance, I think [60] I had a fellow one time that was charged with threatening to blow up the governor.

And Dr. Centor I believe had examined him, and based on Dr. Centor's findings, the man was incompetent to stand trial or was found not guilty by reason of insanity, I have forgotten which.

I had had cases where he helped me, say in terms of defense or mitigation. I had had other cases where he landed pretty much in the Commonwealth's lap and was of no help. My main concern was to get Mr. Williams evaluated.

Q Now Mr. Williams was – part of the evaluation was Mr. Williams' IQ?

A (Nods affirmatively.)

Q And that rated, as Dr. Centor I believe said, on the borderline between mental retardation, right on that border there; right?

A As I recall, yes.

Q And you realized from that diagnosis and from your interactions with Mr. Williams that he was not going

to be the source, given his limited capacity, of a great deal of information that was necessarily reliable; is that correct?

A I am not sure I understand your question.

[61] Q Let me rephrase it because I want to be clear. You were aware that Mr. Williams had limited intellectual capacities?

A Yes, I knew he had a limited education.

Q And he didn't, you know, perhaps went to 7th grade?

A Uh-huh.

Q And was of limited intelligence?

A Right.

Q And that was evident to you before you even got the IQ report?

A That was evident, yes.

Q And you realized that dealing with Mr. Williams and his limited intelligence and capacities that it would be necessary to do some digging to find additional information because your client would not necessarily be the most helpful client in the world?

A Well it wasn't just Mr. Williams' case. I mean, I have had some clients with the same background or mental disability or disadvantage as Mr. Williams who are extremely helpful on their cases and who actually even made unbelievably somewhat articulate witnesses.

I never had any problem communicating with Mr. Williams. That is not to say [62] he could tell me everything that I needed or give me an explanation for everything or pull everything together.

But at the same time, Mr. Smitherman and I could carry on a conversation with him, we could get information from him.

Q What information when Dr. Centor evaluated Mr. Williams at Central State or wherever he evaluated him, what type of interaction and communication did you have with Dr. Centor?

A As best I can recall, I think I may have talked with him on the phone possibly before the examination. I know that I sent him copies of practically everything I have – the indictments, autopsy reports, what background information I could gather.

I tried to send that to Dr. Centor, one, because I wanted him to see the situation that we were facing in having to develop a defense for Mr. Williams.

And secondly, I knew the Commonwealth was going to send him everything but the kitchen sink. And I wanted to be able to rebut that and not have everything that came into his hands coming just from the Commonwealth's Attorney's [63] office.

Prior to trial did you meet with Dr. Centor?

A Yes.

Q How many times?

A At least once, probably more. But I had corresponded with him and talked with him before the trial. I

can't remember the exact number of times, I know it was at least once, probably more.

Q The one that you can remember when you met with him, for how long a period of time did you meet with him?

A I can't recall. Probably at least fifteen, twenty minutes or more.

Q Now you said that you sent him everything you have regarding Terry's background; is that right?

A That is right.

Q In advance, in your preparation and investigation prior to trial, did you locate Mr. Williams' school records?

A No.

Q Did you make any attempt to locate them?

A No. Wouldn't have done much good.

Q But you never saw them to be able to [64] make that analysis one way or the other?

A No.

Q Right?

A That is right.

Q And you never looked at – did you take any steps to get Terry Williams' doctors' records?

A No.

Q Did you make any attempt to get the records of Terry Williams from the Department of Youth and Family Services?

A Those were off limits to me. Those are normally not discoverable.

Q Did you make any attempts to get those records?

A No, because state law didn't permit it.

Q So you concluded that you were barred from getting – let me just give you an exhibit which has been marked as Exhibit 8, which is the records –

THE COURT: 8?

MR. POWERS: 8, Your Honor.

Q The Department of Youth and Family Services, which we got by just writing a letter. It is – without subpoena. I am going to direct your attention to this document dated September 11, 1955.

A All right.

[65] Q Now you have never seen that document before I take it?

A No, sir.

Q That document reflects that at the tender age of one year, Terry Williams was placed in a foster home because his parents were drunk and they had given the three or four children were also drunk, they weren't clothed, there were feces on the floor, there were pools of urination on the floor, the house was a shambles, Social Services concluded that the parents were neglectful.

Now that report, if it had come to your attention, would you have thought that that report would have been a significant piece of evidence to give to the doctors in this case?

A Possibly. If I had had it, I would have sent it, yes.

Q Would it have been a report that you would have introduced into evidence at the trial to bring to the attention to the judge and to the jury regarding mitigating circumstances?

A Well the report itself probably would have been hearsay. But if there was anyone around from the Danville Juvenile Court, say the social worker or someone who could vouch for the truth [66] therein, chances are we would have had them.

Q So apart from any evidentiary or procedural problems with admitting it into evidence, if there were any, you would have put that into the record?

A Yes.

Q If you had known about it?

A Yes, if I had known about it.

Q But you didn't know about it?

A I didn't know about it, and back in 1985 that kind of thing was normally not discoverable without a subpoena and good cause shown.

Q Did you seek the issuance of a subpoena?

A No. As I said, I didn't know about it.

Q Did you seek to locate records showing that Terry Williams' mother while he was in his infancy was arrested several times for bootlegging?

A No.

Q Did you interview Terry Williams' mother and ask her about her alcoholism or her drinking at the time that she carried Terry Williams in utero?

A No.

Q So you made no attempt to locate those records either?

A No. As I said, we didn't know they were [67] out there.

Q Did you make any attempt to secure records regarding the decedent, Mr. Stone, any doctors' records?

A There were none really to gather.

Q But did you attempt to gather them?

A No.

Q Now the cause of death of Mr. Stone, the decedent, was an issue during that trial?

A Very much so.

Q But you didn't try to locate any records showing any prior injuries, did you?

A (Shakes head in the negative.) Did not know where to look.

Q Did you make any attempt to secure correctional records regarding Terry Williams?

A No.

Q How about employment records?

A We tried to pin down his employment history, and there was very little that we could hang our hat on

there. Normally employers are persons that I try to get help from where I have got a criminal case.

Now normally granted it is usually one where it is trying to get somebody's [68] driver's license back or something of that sort. But it was a resource we just really didn't have as far as Mr. Williams' case.

Q Were you aware either through interviews or records that Terry Williams had spent four years after the report that I showed you a moment ago in a foster care? Were you aware of that?

A No.

Q Going to the cause of death, did you interview neighbors or people in the neighborhood on the question of Mr. Stones', the possibility of Mr. Stone the decedent, having prior injuries?

A We talked to some people; I don't know if they were from the neighborhood. We talked to some people, but nobody could tell us anything definite.

Nobody could – nobody could come up with anything we could use in court, is what I guess I am trying to say.

Q The record reflects that you had several witnesses subpoenaed.

A Yes.

Q Do you recall who you subpoenaed? And was that on the cause of death issue?

A I don't think so.

[69] Q Do you know what those witnesses who were subpoenaed the purpose, what was your intent in putting them on?

A I am thinking – and again I am having to stretch to remember – I am thinking they were more on the mitigation issue for sentencing.

Q So that there were – any witnesses that you subpoenaed, did you put on?

A Yes.

Q Now did you ever consider hiring a private investigator?

A We made, as I recall we made a motion for the appointment of one. First of all, if we got one, it was with the Court's discretion. We made the motion, as I recall, and the motion was overruled.

Q Right.

A Neither Mr. Smitherman nor I had the resources to hire a private investigator.

Q And of course Mr. Williams was indigent; correct?

A That is correct.

And had no resources to kick in for that purpose?

A That is correct, nor did his family.

Q And you considered the hiring of a [70] private investigator important to this case in order to do more in-depth research into the cause of death and the robbery; correct?

A It is something I would have liked to have had; correct.

Q And a skilled private investigator might have been able to negotiate his or her way around the neighborhood of Henry Street, for instance, more effectively than you thought you could?

A Probably.

Q And whatever motion that you made for a private investigator would be in the record, wouldn't it?

A It should be. If we made it, it is in there.

Q But you certainly felt that that was something that you needed?

A It is something I wanted. It is something that would have been nice to have, but again I had gone down the same road in the Watkins case.

And I think Mr. Conway and I may have gone down the same road in the Ricky Price case. There are a lot of things that you can ask for, obviously, like private detective or an independent [71] psychiatric examination.

Now we weren't even entitled to the independent psychiatric evaluation until the Ake case came down out of the U. S. Supreme Court just before Ricky Price's case.

Ricky Price's case was the first one we were able to get another, as I recall, another doctor. And Ake had come out, as I recall, by the time Mr. Williams' case rolled around.

But asking for it is one thing, getting it is another. Generally the Courts at least in this part of Virginia don't grant it, even in capital cases.

Q Okay.

A Or at least they didn't in the mid-80's.

Q Now Mr. Motley, getting to the cause of death, this was an unusual case, would you agree, because it entailed the exhuming of a body and an autopsy performed many months after the fact?

A That is right.

Q And is it fair to say that is the only case that you have ever been involved in that that has occurred?

A That is true.

Q And the state actually used their own [72] pathologist to perform an autopsy because no autopsy had been prepared when the decedent died?

A Yes, the state had their own medical examiner, and it is not something that the Commonwealth's Attorney cooks up. It is what the state, it is what the Virginia Code, you know, prescribes for instances where there is an exhumation based on possible foul play or criminal activity. I mean, it is not a scheme or something the prosecutor cooks up.

Q Sure. And in order to put yourself on the same footing that the state was, in the sense that they had a medical examiner, did you request the Court for the appointment of your own pathologist to assist in the defense and your preparation in a trial regarding the cause of death?

A No.

Q But you will agree that the cause of death was one of the central issues in the case?

A It was an issue in the case, yes.

Q And in fact you had argued that the cause of death could have been alcohol poisoning, for instance?

A That is what the initial finding was. There was already medical evidence in there that I [73] think Mr. Stone had like a .41 blood alcohol content, which is as I understand it practically a lethal concentration in itself.

And Mr. Stone also lived in a very high crime area. And as best we would gather, Mr. Stone also had a proclivity to drink himself into oblivion. So, yes, the cause of his death was very much an issue in the case.

Q When you ascertained that he drank himself regularly into oblivion – Mr. Stone – did you consider putting on witnesses to that effect to show that to the jury?

A Well we considered it, but again we looked, we looked for people who could come up to the courthouse and say, look, this guy fell down, this guy cut himself, this guy did this, that, whatever.

We tried to go down that road, and what we found as far as good hard reliable evidence that would, one, be admissible, and two, have even an inkling of credibility in front of a jury just wasn't out there.

Q You just couldn't find it?

A Several people that we found, all we had was just hearsay – I heard he was a loser, I heard he fell down at

work. We didn't have anything. If we [74] had had it, you can bet your bottom dollar we would have had it on the witness stand.

* * *

[75] Q Mr. Motley, did there come a time that you made a motion to the Court for the appointment of an independent psychiatrist to help the defense?

A As best I can recall, yes.

Q And was Dr. Mansheim appointed pursuant to your motion?

A Yes, sir.

Q And in your mind was Dr. Mansheim different than Dr. Centor?

A Yes.

Q So that Dr. Mansheim was there to specifically assist you during the course of the trial in preparation for trial?

A Well not so much that. It was also to give us a second, an independent opinion. At that stage, as much as assistance was involved, I had already come up empty handed on one examination of Mr. Williams.

And for another reason, I wanted to get a second opinion. And Dr. Mansheim represented that opportunity.

[76] Q But you didn't avail yourself of that opportunity for a second opinion regarding a pathologist or you didn't attempt to?

A No. There was already case law with Ake that opened the door to get a second doctor, second psychiatrist. Frankly, if it had not been for the Ake case, Dr. Mansheim would never have entered the Williams case at all.

Q So is it fair to say that it wasn't that you didn't think you needed a pathologist, it was that you didn't think you could get one?

A That is right.

Q So you didn't ask?

A That is right.

Q. Was future dangerousness anticipated to be an important part of this case, the issue of future dangerousness?

A Both future dangerousness and also possibly vileness, not so much in killing, but just the circumstances of a robbery, an old man who was defenseless.

Q Did you say vileness?

A I anticipated that that could possibly have also factored in, because you did have a defenseless, elderly victim.

[77] Q Okay. And as this case proceeded to trial, was vileness still in the case, was that part of the case?

A Indirectly, indirectly. It was still something that we wanted to be ready for and have something in the back of our minds what to do on if the prosecution trotted it out.

But it didn't, it didn't look like it was going to pan out to be a vileness case as much as it would future dangerousness.

Q At one point Dr. Centor wrote you a letter stating that he believed that Mr. Williams had a low probability of future dangerousness; isn't that correct?

A I really cannot recall. There were several things from Dr. Centor.

Q Let me just show you Exhibit Number 2, which is a letter to you from Dr. Centor dated August 11 that a psychological makeup is such that there is a low probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society.

A That is right.

Q Do you recall that?

A I believe I do.

[78] Q Now did Dr. Centor ever tell you at any point prior to trial that his opinion had changed?

A He may have; I really can't recall.

Q So you can't recall one way or the other?

A I can't recall one way or the other.

Q But that would have been significant if he had changed that view?

A Anything at that stage could have been significant.

Q Well in fact he did change his view at trial, didn't he?

A As I recall, he did, yes.

Q Now Dr. Mansheim, did you ask Dr. Mansheim to examine Terry regarding the future dangerousness question?

A I sent – I don't know that it was so much on future dangerousness. I did the same thing that I had with Dr. Centor, I sent him what I had as far as pleadings, reports from my file, I sent him correspondence at length.

Q But my question is, you have already answered that future dangerousness you anticipated to be an issue in the case. Did you ask any of the doctors to report to you about their professional [79] opinion regarding the issue of future dangerousness prior to trial?

A I can't recall that I specifically limited it to future dangerousness. I think what I wanted and what I probably may have asked was for anything that might help him on any issue, anything.

Q Dr. Mansheim did testify regarding mitigation, didn't he?

A Yes, sir.

Q And he testified regarding the bullets in the gun, for instance? Do you recall that, that Terry told him that he had taken some bullets out of a gun in an earlier commission of a crime?

A That I don't recall.

Q Do you recall that Dr. Mansheim at that point was released and he went home to Norfolk?

A I can't really remember.

Q But in any event, Dr. Mansheim was not present when Dr. Centor and Dr. Ryans testified on future dangerousness, was he?

A I really can't recall.

Q When did you start preparing for the penalty phase of the trial?

A We had anticipated that we would probably have to go into a penalty phase, and I think [80] I started making some preparations probably as much as a week or two before the trial, just thinking in general terms about what can we get, what can we put on.

Q But you didn't interview any witnesses or try to gather any documents until a week or so before the trial regarding penalty?

A That is right. We were trying to keep it from getting to that first and foremost.

Q I understand. And so that your primary effort was on the guilt phase?

A That is right. We figured that would be where we had to make the initial stand and try to defend right away.

Q Did you speak to Bruce Elliott? Do you know who Bruce Elliott is?

A I can't recall whether I spoke to him or not.

Q A CPA in Harrisonburg, Virginia?

A It doesn't ring a bell.

Q Did you speak to, make any attempt to speak to Terry's wife or to his daughter?

A No, we didn't.

Q Were you aware that his wife and daughter were present at the trial, came to the [81] trial?

A I really can't recall. I think . . . really don't remember.

Q So I take it that there were no records that you sought to locate regarding mitigation?

A No. We had asked Terry and I think some people in Terry's family to tell us anything or anyone who could possibly help Terry or provide us with any information. And as I recall, we used what we got and what we had.

Q Did it come to your attention that Terry had suffered head injuries in the past?

A No. I think that was one of the things that we had asked for as part of his work-up with the psychiatrist was anything from him that might have contribution to his mental state or any particular conditions. Anything that we got on that I think would have come from that.

Q But you didn't do any independent investigation to ascertain one way or the other whether there were head injuries?

A No. Other than I believe, I think that we asked him did you have any kind of disabling injury or substance abuse problem or significant trauma or anything. I think it is probably just the [82] stock question that one would normally ask anybody charged with violent crime.

Q And head injury didn't come to your attention from Terry?

A I don't recall that it did, no.

Q You tried to suppress the confession; correct?

A That is right.

Q And you lost that?

A That is correct.

Q Did you take any steps to challenge the confession before the jury once it was introduced?

A No. It had already been ruled admissible by the judge.

Q Well challenge in the sense that not its admissibility but to present to the jury that the defendant claimed that the confession was a product of dreams and hallucinations?

A I can't really recall offhand. I know that we tried at length to get the confession suppressed, and we were unsuccessful. We did of course make a note of it so that we could preserve it for appeal.

Once the judge had ruled on it, though, as I recall I think we just figured it would [83] be counter-productive to try to keep going back over the confession.

And the more we would go over it, of course the more the jury would be looking at it anyway, so we wanted to just pretty much move on from that point.

Q Mr. Motley, I would like to just touch on a couple of things that I missed and hopefully wrap it up. Is there any family history of depression? Your mother, for instance, has she been treated for depression?

A Not for depression, per se. My mother has had a thyroid condition that has existed since before I was born. She had to have treatment at the University of Virginia Hospital when I was a small child for it.

It can, as I understand, as I understand it, thyroid can cause some symptoms that would appear to be depressive.

Q And was that in fact the case?

A As I understand it, yes, sir, just relating from what my father and others and some of her doctors have told me over the years. She has never been diagnosed with clinical depression per se.

Q Are you under continuing care of a [84] doctor today?

A The arrangement I have with Dr. Shield is that if I feel like a depressive episode is coming on or if my wife notices anything or I start feeling out of the ordinary, I let him know and see him as soon as possible. It is an agreement I have had with him since he got me off Prozac about sixteen months ago.

Q So he is basically on call and monitoring your condition?

A He is on call if I need him, and thankfully I haven't needed him. And right now I feel about the best I have felt in a number of years.

Q That is good. Is there any family history of alcoholism?

A No.

* * *

[84] Q Mr. Motley, the medical examiner for the western district of Virginia is Mr. Oxley?

A Dr. Oxley, yes.

Q Dr. Oxley, I am sorry. Did you meet with Dr. Oxley prior to the trial?

[85] A I can't recall whether I met with him or Mr. Smitherman met with him or both. As best I can remember, we either met with him or talked with him by phone. I am thinking we met with him. I had already had all his reports and everything.

Q Would you agree that, going back to the Terry Williams trial, that that was a stressful, high pressure event?

A I would say so.

MR. POWERS: Your Honor, I have no further questions.

THE COURT: All right, Mr. Condon.

CROSS EXAMINATION

BY MR. CONDON:

Q Mr. Motley, trying to follow in some sequence here, the symptoms that you told Dr. Gaddy I believe in June of '87 that you said you had about six months which would place it December of '86, do you recall having those symptoms during the trial of this case?

A No, I don't.

Q When you use the term depressed, are you using that generically or do you agree that there gradations or degrees? I mean, when you say feeling [86] depressed, you mean I was blue or sad or do you mean I was dysfunctional or somewhere in between all those times you said you had been feeling depressed for the last couple of years?

A I think probably fatigued would be the way to describe it. Fatigue, some days down in the dumps, kind of a why bother attitude.

Again, it is one of those things you know you can't really fine tune it. Some of those times I think may have been generically speaking or generally speaking.

Q Did I understand that you prioritized your work, you prioritized criminal as more important than civil?

A Yes, I did.

Q And how about, would a capital murder case, would that get the highest priority in your criminal practice?

A Yes, it would.

Q And the brief which the record shows was filed sometime in the spring of '87, it was argued in June of '87, did you prepare that or did Mr. Smitherman prepare that?

A We both prepared it.

Q But you did have Mr. Smitherman's [87] assistance on the brief?

A We worked together on it.

Q And that would have been during that six-month period when you said you had been feeling fatigued?

A That is right.

Q Do you know whether Mr. Smitherman did more of the work on the brief or you did more work on the brief?

A I think we split it fairly evenly.

Q Now let me ask you two general questions. What was you and Mr. Smitherman's basic trial strategy at the guilt phase?

A At the guilt phase?

Q Yes?

A We wanted to create as much reasonable doubt as possible.

Q Regarding what?

A Regarding Terry's culpability. We wanted to have the jury have a real question as to what actually caused Mr. Stone to die, whether it was alcohol poisoning or an old injury that he previously sustained or whether it was by foul play.

We wanted to try to show that there were other things besides a mattock blow that [88] he could have died from. We wanted the jury to get the impression that it was the stretch that this man was killed. That was one thing we wanted to do.

We also wanted to try to cast as much reasonable doubt as we could on the robbery. We wanted to emphasize the point that there were people coming in and going out of Mr. Stone's house that could have lifted his wallet or taken things that belonged to him. Those were two of the main things we wanted to emphasize.

Q So you did challenge the corpus delicti of the robbery and of the murder, and you raised those issues on appeal?

A That is correct, all of those were raised again in the state supreme court.

Q Let me ask you this, you did have Mr. Williams' confession?

A Yes.

Q His statement written and taped?

A Yes.

Q And in those he says, I hit the man with a mattock and he started gasping for breath. And he also says that after he put the mattock away, he took the wallet. In light of those confessions, why were you pursuing the challenge of the corpus delicti? [89] What more were you hoping to gain?

A Well we didn't have a lot of ammunition to shoot. We were, as the old saying goes, you dance with the one that brought you. And the only thing that we had was to try to create reasonable doubt and try to get the jury to realize or to think that even if something had happened to Mr. Stone, it was somebody else besides Terry that had

an opportunity to do it. I don't know if that answers your question or not.

Q Did you hope to take advantage of the confusion between the medical examiner and Dr. Hardy?

A Yes.

Q And you did try and bring that out?

A Yes we tried to bring that out. And we raised sand when Mr. Fuller started trying to press Dr. Hardy and Dr. Oxley.

In the brief we argued at length that the Commonwealth was impermissibly impeaching his own witness. And a lot of the appeal swung on that particular assignment of error.

Q So if you can recall, what you were faced with assessing, you had a confession, you had Dr. Oxley's medical report, which while it may not be a mirror image, did match up with the blow and [90] describe the injuries, and your client was telling you what?

A Client was telling us that he was having dreams, he was having visions that he had done these things, but that they were trying to entrap him into claiming that he had actually done it, when he had just dreamed it or envisioned it.

And he was actually pleading for help and was instead being prosecuted for the murder and aggravated malicious wounding.

Q I believe you said either you or Rob Smitherman or both talked to Fuller, prosecutor and the police and the medical experts, including the psychiatrist and Dr. Oxley.

Did you feel that you had a good idea what the Commonwealth's case was going to be at the guilt phase?

A Yes, we did. I had been trying cases against Mr. Fuller's office for six years. And we had been granted full discovery or at least discovery to the extent permitted by the rules of court.

And I had had some lengthy discussions with Mr. Fuller about scientific evidence in the case as far as the autopsy reports. I had already gone over the exhumation, what that revealed [91] as far as that autopsy and proceedings on that.

And I knew from experience in the Watkins case that other offenses in other criminal matters were going to be coming in. And it pretty much has evolved over the years at capital sentencing hearings that the Commonwealth can pretty much pitch in any number of things on the issue of aggravation or futures dangerousness at sentencing.

Q Were there any surprises at the guilt phase?

A No.

Q Based on prior to this trial, had you had experience with Dr. Oxley and Dr. Centor and Central State physicians?

A Yes.

Q Had you ever challenged them before or ever had any call to challenge them before, their opinions?

A You mean as far as their competency?

Q Yes.

A No cause.

Q Do you have any idea how many cases you had had previously where you had relied on opinions of Central State in criminal cases?

A Probably about a dozen.

[92] Q How about, can you recall if you had any cases where you had relied on the medical examiner's office for their opinion as to the cause of death?

A Probably about a half a dozen.

Q Was part of the reason that you didn't seek a pathologist is that you didn't see any reason to?

A I didn't think we would get one even if we asked for one.

Q But how about the fact that Terry's confession says he struck Mr. Stone and he started gasping for breath, didn't that sort of match up with the autopsy?

A Yes.

Q Did you all even discuss, do you recall discussing whether or not to get a pathologist?

A I don't think we did. I don't really recall.

Q You said you didn't think you would get one. Do you think, not in retrospect, but at the time, if you can recollect, do you think you needed one in light of his confession?

A You had the confession, and you had conflicting – you had some conflicting medical reports. The confession was obviously a big [93] stumbling block, and as I testified earlier, the big handicap, the big pitfall, and by

pitfall I mean something about the size of the Grand Canyon, the big pitfall was that Terry's dreams, visions, whatever, none of them were corroborated by the medical people who examined him.

Q And you had no reason based on your experience to doubt the opinions of these experts?

A No reason.

Q And you are not either a psychologist or a psychiatrist?

A No, sir.

Q And it is your practice to rely on experts in their fields?

A That is right.

Q How about your personal observations, did you see anything in your personal observations that alerted you or triggered you to say these doctors must be wrong?

A No. I had dealt with all of them I think except Dr. Mansheim before. I knew Dr. Centor personally and knew Dr. Ryans personally. I had a very high regard for both and still do.

Q Before today have you ever heard of fetal alcohol syndrome?

[94] A Only I think maybe about a year or so ago maybe something on CNN or one of the news shows on TV.

Q Do you know anything about it?

A No.

Q I assume you knew nothing about it back at the time of this trial?

A No.

Q Do you have any idea when it was a matter of common knowledge in the medical profession, if it is?

A I don't recall – as I said, the first I think I ever heard about it was either on CNN one night or one of these news programs like Day One or Dateline or something like that. I think most people know it is not a good idea to drink while you are pregnant.

Q What was your strategy at the penalty phase, if you know?

A Anything that we could do to try to convince the jury that bad as this situation was, it didn't warrant taking yet another human life. That was our main effort was just try to find some way to convince the jury to spare Terry's life.

Q What did you consider your biggest [95] pitfall or stumbling block when facing the penalty phase?

A Again, the confession. The confession and the psychiatric reports on Mr. Williams and also of course the Stroud case.

Q How about the theory that you should put on family members and ministers and friends to say he is a nice guy and nonviolent? Did you consider that strategy? You did put on a couple of witnesses.

A Yes, it was about all we had. It was one of those things where we had a very difficult, I won't say hopeless situation, but a very difficult situation.

And we put on what we had, and we used – a lot of times that is all you have got, and it is something that I had used with the Watkins case, I think it is something that we had also tried as I recall somewhere in the Price case, and in any number of times in other cases or even in Juvenile Court, try to find anybody who can say well this fellow has made some mistakes, but he is not as bad as he is made out to be.

Q Having used it before, had you drawn any conclusions or formed any opinions about the value of this kind of defense?

[96] A Generally of negligible value.

Q Did it work in the Watkins case?

A No.

Q Did it work in the Price case?

A No.

Q So what did you want to get across to the jury, what was your theory about Terry, since you had the Stroud case facing you and all the implications of that, you had his criminal record, you had the fact that he had struck this man down who was almost helpless inebriated and a friend of his to take three dollars. I mean, what did you hope to accomplish?

A I wanted to try to find some way, any way to save his life. And the problem on top of everything else was there was very little Terry had as far as a background or prior accomplishments in life that you could pitch out to a jury.

He hadn't been a star football player in high school who had shown self-discipline and ability to compete and obey rules on the playing field, that was out.

He didn't have a military record, I couldn't argue that this man had served his country well in the Army or had survived all kinds of ordeals [97] in Vietnam, I didn't have any of that to argue.

I didn't have a steady job history where I could argue that this man had gone to work, tried to make a living, done the things that I guess good citizens are expected to do.

I didn't have any of that really to hang a hat on or even pitch out to the jury. The main thing that I had was a bunch of heinous criminal offenses that could not be swept under the rug, could not be overlooked, could not be trivialized.

I didn't want to insult the jury's intelligence. I didn't want to say ignore what all you have seen in court the last couple of days.

I wanted to try to appeal just to their sense of humanity, their sense of mercy and essentially make an argument, hey, the body count with Terry Williams is now two people.

Although Mrs. Stroud was still alive at that time, she was a vegetable. I wanted the jury to see that they could punish him, that they could remove him as a threat, an arguable future danger to society, without taking his life and adding yet another third person, having a third person forfeit their life in the whole history of things.

[98] Q Didn't you make some kind of argument to the jury about trying to emphasize the fact that he had confessed and there wouldn't even be a case if he hadn't confessed? Was that part of your strategy?

A Yes. At the time Mr. Williams wrote the police chief, as best I can recall the Stroud case remained unsolved and Mr. Stone's death was still considered an instance of an elderly alcoholic who imbibed one time too many.

I don't think there was any suspicion of foul play in Mr. Stone's death. Mr. Williams really brought the house down on himself.

Q They showed you Exhibit 2, the August 11, '86 letter from Dr. Centor about no future dangerousness. Do you know whether or not at that time Dr. Centor was familiar with his criminal record and the facts of the Stroud case and the other charges?

A I don't recall about that.

Q Did you ever discuss with Dr. Centor what influenced his changing his opinion?

A I probably did, but I don't remember exactly what he said.

Q Did Dr. Mansheim give you any advice on future dangerousness?

[99] A Dr. Mansheim really didn't have anything much that could help us. I remember Mr. Smitherman and I talked at length with him, I mean even right on up to the testimony in the penalty phase hearing. But I don't

think Dr. Mansheim had anything really that we could draw on much to help.

Q He couldn't have said that Terry would not be a danger in the future?

A No.

Q He was your expert, and of course you didn't have to put him on unless you wanted to. Do you know what he would have testified if asked maybe on cross-examination about future dangerousness?

A He probably would have testified that Terry was likely to exhibit violent crimes in the future.

Q Is that one reason you steered away from psychiatric mitigation evidence?

A Exactly. I had tried to find something, anything, a sliver of psychiatric evidence that would help on anything the whole time I had had the case.

And we had come up with nothing the whole way, and I didn't want to beat a dead horse on it. I didn't have anything that was going to help us, so I didn't even want to go any further on it.

[100] Q On the FAS, have you ever had occasion prior to this to make the argument that somebody is a drug addict or somebody is an alcoholic?

A FAS is what?

Q Is the fetal alcohol syndrome.

A Are you asking me if I have ever used that as a defense in a case?

Q To try and argue mitigation that somebody has a drug problem or somebody has an alcohol problem and you ought to feel sorry for them?

A Any number of times. Any number of times from J and D Court all the way on up to Federal Court and here in Circuit Court.

Q And based on your experience, is that a very successful argument?

A No.

Q Now you said you really concentrated on the guilt phase. Was that because you knew what you were facing at the penalty phase from the Stroud case?

A Yes.

Q So you hoped to cut it off and not even have to deal with the heinous –

A We wanted to try to cut it off if at all possible at the guilt phase. If they had come back [101] with anything other than capital murder, I think we would have considered it a victory.

Q They asked you about challenging the confession. Do you recall, didn't the police officers testify that Terry said on the second tape that everything was a dream and everything was an illusion?

A He had kind of gone back and forth. As I recall, he had written a letter to the chief of police, he gave a confession, they had a taped statement from him.

And then I think he talked with his family and then recanted it. And the whole time he was claiming he was

having these dreams or visions or hallucinations or whatever.

Q What about the issue about you should have gone around and found people to testify about prior injuries. You said you did look for some people and all you got was hearsay.

But didn't you at that time, at the time of trial, didn't you have Dr. Oxley's autopsy?

A Yes.

Q And you had Terry's confession that said, I hit him in the chest and he started gasping [102] for breath. Was there anything, did you have any information, even though you tried, was there any information before you?

You had his confession that said when I struck him with the mattock he gasped for breath, and Dr. Oxley's report, was there anything to alert you to go looking and try and find job injuries or falling down drunk or something like that?

A It was an avenue we pursued. After all, you have a man being dug up about four or five months or longer after his death, for lack of a more eloquent way to put it.

We tried to find people who could testify as to those alternative theories, and they were all dead ends. And the problem is, even Terry's confession, I am not a doctor, but I can imagine a man with a collapsed lung or punctured lung is going to be gasping for breath. And that in itself almost corroborates the corpus delicti.

Q But still you attempted because of the foul-up between the doctors to try and create –

A Oh, yes.

Q You tried to highlight that, to sow some doubt, hopefully?

A We wanted to run with whatever had a [103] chance of working. That was the one thing that had a chance of working.

Q I think you said you didn't recall who they were, but Terry did give you the names of some witnesses?

A Yes, Terry, and I think possibly also his mother.

Q Did you or Mr. Smitherman talk to these people?

A Yes.

Q And also the thing about correctional records, employment records, you have already touched base partially on this, school records, juvenile records?

A Well the other thing on this, there were really two sentencing hearings for him. There was the penalty phase with the jury, but then there was like about a six-week lag before a final sentencing.

Q By the Court?

A By the Court, where the Court had ordered a thorough and comprehensive presentence report. So while I couldn't get these things, I felt like I couldn't get them, while Mr. Smitherman or I might not have had access to them, the probation officer would.

[104] And anything like his prior juvenile history, educational background, employment, military service, all those things were gone over with a fine tooth comb in the presentence report.

And that is true not only for Mr. Williams' presentence report but any felony presentence report that is prepared in Virginia.

That is why reports happen, the judges want to know as much as possible about the man they are getting ready to sentence.

Q Besides the pathologist, you have been criticized for not getting a private investigator or expert on coerced confessions or an expert on mitigation. Did the state of the law at that time, did that allow for any of those appointments to indigents?

A Basically, no.

Q And based on your experience in this area or in this jurisdiction, were they routinely appointed or denied?

A Routinely denied.

Q Did Lula Williams, did you talk to her, the mother?

A Yes.

Q Did she ever make known to you that she [105] had supposedly been an alcoholic during her pregnancy?

A No. We had asked her for anything, anything that would help Terry. I don't know that we zeroed it down to specific areas like substance abuse, mistreatment as a child. We just shotgunned it and said is there anything that you know of that can help Terry, if so please tell us now.

Q Did you see any reason to get fingerprints off the letter to see if that is what was sent to the police chief?

A No.

Q Why was that?

A The police, as I understood it, had already made an effort to determine what inmate had sent the letter. And as I recall, Terry had pretty much admitted sending the letter to the chief.

Q Did Terry admit it to you?

A As I recall, yes.

MR. CONDON: That is all I have at this time, Your Honor.

THE COURT: Mr. Powers.

REDIRECT EXAMINATION

BY MR. POWERS:

Q Mr. Motley, you handled the appeal with [106] Mr. Smitherman, and I take it that you divided up issues just like you did with the trial, with you having primary responsibility for some and him with other issues; correct?

A Yes, we split it.

Q Do you recall how that split, what you handled and what he handled?

A Not offhand, I don't recall which people briefed what. I sat down with the brief over the weekend and looked at it again. And really from the writing style and

everything else, I can't really remember more than one or two that Mr. Smitherman specifically argued and the rest that I had. I really can't recall.

Q Did you have access to a witness list from the state?

A Basically, yes. Not a witness list per se, but we knew that the guts of the Commonwealth's case was going to come from the detectives who took the confession and also the medical experts.

Q Didn't you go and seek to either get a witness list or the subpoenas that the state had issued to find out who the witnesses would be?

A Yes, we did.

Q And so you found out who they would be [107] calling?

A Yes.

Q How much in advance of the trial?

A I imagine probably about a week or so.

Q Did you make any attempt to interview the people on that list?

A As I recall, we did. I don't know that we got all of them, I can't recall who talked with whom. We knew that the main ones were of course going to be the detectives, and I think we spent the most time talking with them.

Q How about for instance John Whittle and Debra Grant, the people who testified concerning finding the body and who were there that evening, you didn't interview them, did you?

A I can't recall whether we did or not.

Q Now this presentencing report, is it your testimony that the presentencing report would get into things like child abuse and youth and juvenile services and Terry's record in correctional institutions and whether his good conduct –

A Yes, generally it touches on all those areas.

Q Now that presentencing report that you have testified, that doesn't go to the jury, the jury [108] never sees that?

A No.

Q So those issues that you were relying on the presentence report were never presented to the jury, were they?

A No.

Q That was your job to present any of those issues to the jury, wasn't it?

A Yes.

Q But you didn't do it?

A Well we presented what we had.

Q But you didn't make any effort to get those reports, for instance?

A Well as I previously told you, a lot of those just weren't available to us under state law at the time, and may still not be.

Q And in fact when you refer to a presentencing report, you are really talking about a post-sentencing report, aren't you, that goes to the judge?

A No, not really. It is called a presentence report. Some states may call it a post-conviction report.

Q Okay. Now fetal alcohol syndrome is something that you have only become aware of [109] recently, but I think it is your testimony that you back at the trial in 1986, if it had come to your attention that Terry Williams' mother was an alcoholic and was drinking heavily at the time she was pregnant, you would know that that would be something that would be bad, wouldn't you?

A Yes.

Q And you would also know that that would be something that you would want to bring to the attention of the doctors, wouldn't you?

A Yes.

Q If you had known it?

A If we had known.

Q But you didn't know it?

A No.

Q You recall talking to Dr. Mansheim before the trial, do you know how long that was, your meeting with Dr. Mansheim?

A I don't recall. As best I can remember, I had several meetings with him.

Q Did you meet with him about the same period of time that you testified that you met with Dr. Centor?

A Yes. Kind of talking with both, one or the other.

[110] Q Now testifying today, Doctor – everybody will be a doctor before I leave today.

A I have been called worse.

Q Testifying today, you can't really pinpoint when your depression started, can you?

A No, I can't.

Q And you can't recall ever asking Dr. Mansheim for his opinion regarding future dangerousness, can you?

A I really can't. As noted, I think I just threw out a blanket request for anything that would help Mr. Williams.

Q Just like you did with Mr. Williams' mother, do you know anything that will help us?

A Right. Is there anything that you can possibly think of no matter how remote you may think it is.

Q Did you know that Dr. Ryans and Centor would testify on the issue of future dangerousness before they testified?

A Yes.

Q When did you know that?

A I could expect it. I –

Q Not expect or assume, but did you know?

A Yes.

[111] Q How did you know, and when did you find out?

A Well, I mean, as soon as they had come up with nothing that would help Terry, I figured that they would end up being witnesses for the Commonwealth sooner or later.

Q So that was an assumption you made, not something that was communicated to you in writing?

A Right; that was an assumption.

Q Or no phone calls?

A Right, purely an assumption. And we also had as I said, both sides were under discovery order, and the Commonwealth had already, I don't know that it was so much a formal answer to discovery, but it was just something we knew was down the road, that they would both end up being witnesses.

Q But you didn't make any attempt to have Mr. Mansheim stay at the trial in order to assist you when they testified with what you assumed they would testify to?

A No.

Q Did you give any notice to, written notice to the Court prior to trial that you would bring Terry's – that you would have an insanity plea of any kind?

[112] A No.

Q Or to the prosecution?

A No, because under the rules of court, if you have an insanity defense you have to file a written pleading.

Q I have never seen that, and I just wanted to make sure.

A We didn't have one. If we had had an insanity defense, believe me it would have been the first pleading to hit the file.

Q And you never also made any notice pursuant to the statute that you would be presenting psychiatric testimony regarding mitigation?

A No.

Q Because you never did, did you?

A We didn't have anything. If we had it, it would have been there.

Q Were you aware that the statute regarding expert psychiatrists and psychologists about who their report could go to, that that statute had changed July 1?

A Of what year?

Q Of 1986 right before the trial.

A Yes.

Q And were you aware that the statute was [113] not complied with and that Dr. Mansheim supplied his report to the prosecutor?

A No.

Q Well you have a copy of doctor Mansheim's report that had a cc to Mr. Fuller, didn't you?

A Yes.

Q But you didn't bring that to the attention of the Court or object to it, did you?

A No. And even if I had, it probably would have been ended up moot because under the discovery rules

we would have had to turn over anything we had as far as expert testimony.

I couldn't sit on it or put it under the bed because it was adverse to us. In other words, anything I had like that I would have had to turn over to the Commonwealth anyway and same situation for them.

MR. POWERS: I have no further questions.

MR. CONDON: Just a couple more.

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. CONDON:

Q When you talked to Terry and his mother [114] and whoever else about anything that can help, did any of them mention the fact that his parents were alcoholics or the problems in childhood or anything like that to you?

A No. Every indication we had was that they had tried to provide Terry with a good, loving stable Christian home. We didn't hear anything that Social Services had to be called in or anything of that sort.

Q So Mrs. Williams didn't say, I was an alcoholic at one time?

A No.

Q And she didn't tell you that my husband was an alcoholic and used to mistreat the children?

A No.

Q And when you say you asked them for anything that can help, was it just that question or did you say anything in his background or his growing up?

A I think it was both questions.

MR. CONDON: That is all I have, Your Honor.

MR. POWERS: No questions, Your Honor.

THE COURT: You may step down.

* * *

[125] **ROBERT J. SMITHERMAN** was called as a witness, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MARTORANA:

Q Could you please state your name for the record?

A Robert J. Smitherman.

Q And Mr. Smitherman, you are an attorney in Danville; correct?

A Yes, I am.

Q And what firm do you work with?

A Daniel, Vaughan, Medley and Smitherman at this time.

Q I gather from that name that you are a partner in the firm?

A That is correct.

Q How long have you been with the firm?

A Ten years, well eleven years in August of this year.

Q And was your job with the firm your [126] first job out of law school?

A Yes.

Q Where did you go to law school?

A William and Mary, Marshall Wythe School of Law, William and Mary.

Q When did you graduate?

A 1984.

Q Do you recall being appointed to work on the Terry Williams case as to assist the other defense counsel that had been appointed?

A Yes, I do.

Q And do you recall when that appointment was?

A I don't recall the date. I think it was about a month before the trial, but I am not sure of the date.

Q If I told you that the records show that the appointment came from the Court on August 29, 1986, would you have any reason to disagree with that?

A No, I would not.

Q Does that sound about right?

A I think so.

* * *

[129] Q Now prior to being appointed to this case, had you worked on any capital murder cases?

A No, I had not.

Q Had you worked on any murder cases?

A No.

Q Had you worked on any felony cases?

A Yes.

Q As a court appointed defense attorney?

A As a court appointed defense attorney.

Q And what types of felony cases had you worked on prior to being appointed to the Terry Williams case?

A Grand larcenies, just your normal felony cases that did not – I don't believe I ever worked on a murder case beforehand. May have worked on maybe a malicious wounding or two.

I think I worked on at least one or two rapes or some other sexual offenses before that, but nothing that involved murder.

* * *

[131] Q . . . Now when you started working on this case, did you meet with Mr. Motley, and was there any discussion about how you were going to divide up the work on the case?

A Yes, I met with Mr. Motley. How we were going to divide up work was he gave me certain assignments to

do to talk to witnesses, etcetera, and I did that and then reported back to him.

* * *

[143] Q I understand. Aside from interviewing Dr. Hardy and some fact witnesses, some of them you think are people who found the body, was there any other fact witness or expert who you spoke to prior to the day of the first day of trial?

A I believe I spoke with the police officers before the trial, the detectives that went to discuss with Mr. Williams the letter that he had sent. And I might have even had a very brief discussion with the police chief before then.

Q Anyone else you can think of sitting here today that you spoke to before the first day of trial?

A Again I believe I spoke with – I don't know if I spoke with the witnesses concerning Mr. Stone's prior injuries or not. I do remember that someone did, and I don't know if it was myself or Mr. Motley.

And I spoke with his mother. I might have spoken with some relative of Mr. Williams. I believe I spoke with her on the phone once or twice before then.

Q Her meaning?

A The mother of Mr. Williams.

Q The mother?

[144] A Yes.

Q And you spoke to her on the phone?

A I believe so.

Q Did you speak to any other family members if you can recall?

A I believe – I don't recall. I might have, because I believe Mr. Williams' family members would call us occasionally with more information.

I believe we were getting some information from Mr. Williams' family members because Mr. Williams of course was incarcerated and was not able to investigate himself.

And so I believe that some of Mr. Williams' family was calling. I don't know if I spoke with them or Mr. Motley, but I believe that is how we got the information.

Q Did you ever visit Mr. Williams' home where his mother lived on Henry Street?

A I don't believe so.

Q Had you heard back then when you were representing Mr. Williams the name Bruce Elliott?

A The name does not sound familiar to me. I don't know if at that time I knew of a Bruce Elliott or not. The name does not sound familiar to me at this time.

[145] Q Did you speak to any of the two psychiatrists or one psychologist that were involved in this case, meaning Dr. Centor and Dr. Mansheim and Dr. Ryans?

A I did not. I believe, again I believe that Mr. Motley was the person who was dealing with specific issues involving psychologists and psychiatrists.

Q Did you find it necessary during this time to familiarize yourself with what the psychiatrists were saying and what they were reporting about Mr. Williams?

A Yes. I don't remember – I believe I got all of the reports or reviewed Mr. Motley's file on the reports from the doctors. I know I looked at some reports and also a couple of letters from the doctors.

Q Did you consider any of these doctors to be experts appointed to help you as defense counsel in this case?

A I know that Dr. Mansheim had been appointed for Mr. Williams as under the Ake requirement that he had an independent psychiatrist appointed for him. So I assume that he was appointed for Mr. Williams and to assist us.

[146] Q And it is your testimony that it was basically Mr. Motley who was working with these experts?

A That is correct. Mr. Motley was already working with them when I came into the case, and I believe that is why he continued with them.

Q Were you aware that Dr. Centor had sent a report that said that Terry Williams, there was a low probability that he would be a continuing threat to society? Do you recall that report?

A I recall reading reports, I don't recall the specifics of any of them, of the reports themselves. I don't recall the specifics of any of them except I think Dr. Mansheim.

Q Do you recall the testimony of Dr. Ryans and Centor during the penalty phase of the trial?

A I recognized them when I walked into the witness room, but specifically, no.

Q In terms of the actual trial, did you and Mr. Motley have a game plan as to who would examine which witnesses?

A Yes. He had said you do these people and I will do these people. And, again, he dealt with all of the psychiatrists, psychologists.

I think I asked questions of a [147] few fact witnesses and cross-examined a few fact witnesses. And I cross-examined the medical examiner at the hospital, Dr. Hardy I believe you said his name was.

Q Did you basically examine and cross-examine those individuals that you had talked to prior to trial?

A I know I did in the case of Dr. Hardy. I don't think so on the fact witnesses because I think I had talked – I only remember interviewing or cross-examining only one or two of the fact witnesses, and I think I talked to more than that.

Q Do you recall when you started preparing for the penalty or sentencing phase of the trial?

A Well it was part of the case, and so, you know, I was doing research and talking to people, talking to – I think mainly I did talk to a couple of family members on the phone, as I testified before, I think, about that. And I had discussion with Mr. Motley about that before the case, before the trial. I don't know when.

* * *

[154] Q I have a sheet of paper from your file that has some names on it. I am not sure what it means, maybe I can show it to you and see if this may refresh your memory as perhaps people you spoke to. And I am not sure what this means.

A I am not sure if I am going to remember either, but. This appears to be a list of people that were subpoenaed by the Commonwealth.

[155] I imagine what I did was they had subpoenaed them so many days ahead, and I probably went down to the court and wrote these down from their subpoena request.

Q Okay, great.

A That is what this looks like. And the reason I say that is because it has their addresses, including Dr. Centor and Dr. Oxley.

Q And there is Dr. Ryans there, too?

A Dr. Ryans.

Q In terms of the sentencing or penalty phase, did you and Mr. Motley have a strategy of how you were going to approach the penalty phase?

A We had discussed of course many, many times. And the reason that I – the main reason that I made in my argument and the main reason that I still think Mr. Williams should not have gotten the death penalty was that he turned himself in.

In fact, this murder would not have even been – this death would not even have been determined a murder unless Mr. Williams confessed.

And that showed remorse and that showed something that I was hoping the jury, and Mr. Motley was hoping, the jury would say this person deserves some consideration. And that was our main [156] thrust, that was our main consideration on the penalty phase.

Q Any other consideration, minor perhaps, that you discussed with Mr. Motley?

A Putting his mother on the stand, family members. I think we put – I didn't read through the whole transcript recently, but I think we put more than just Mr. Williams' mother on the stand, some other family members on the stand.

Q Do you recall what you and Mr. Motley attempted to talk about in terms of attempting to do when you put these people on the stand?

Was it for particular issue or issues that you wanted to put his mother and perhaps other family members on the stand?

A It is hard to differentiate between what I discussed with Mr. Motley at the time and what I now would assume that I did something for.

And either I discussed with or I assume now that we put his mother on the stand and his other family members on the stand to show the jury another face. This is a family member, this person will feel great loss if they do sentence Mr. Williams to death, things like that.

Again I don't know, contact [157] between parents and contact between relatives, again I don't remember if we discussed that or if we did it without discussing it.

That was certainly a minor consideration or even more than a minor consideration; it was certainly a consideration.

I don't remember if we discussed anything else, and I would have to think about any other considerations that we had.

At this time I can't think of anything else but the normal ones concerning the appearance of the family members and that type thing.

Q Do you know if you and Motley spoke about putting on as a witness in the sentencing phase Mr. Williams' daughter?

A I don't remember. I remember that every single person we put on the stand, the Commonwealth's attorney would remind them of these horrible, kept using the word horrible and terrible crimes that Mr. Williams had done, did you know that he did this and did you know that he did that.

And after a couple of witnesses, it almost seemed like we were assisting the Commonwealth in reminding the jury again and again. And I believe that there were other family members [158] who were there to testify, and one who I think even wanted to testify.

But it kept being so repetitive that the Commonwealth's attorney would bring up all these other crimes Mr. Williams had been convicted of, and it was like we

were doing more harm than good reinforcing all of these things in the jury's minds.

Q Is it because of that concern that you did not call any other family members who were available?

A I believe there were one or two others available at least that we did not call because that was a concern.

Q Anyone else, non-family members that you did not call because of that?

A May have been a friend or two; I don't remember.

Q In terms of what you did personally to gather evidence in the sentencing phase, I would like to just concentrate on that. Did you speak to anyone other than family members?

A Of course we talked to Mr. Williams quite a few times.

Q And what did you say or what did you ask Mr. Williams?

[159] A About family and who should we get to testify for you. In case this happens, who should we get, that type of thing.

And he gave us some names, I think we got names of family members that way. And asked him several times in several meetings before the trial and during the trial.

Q And he gave you some names; is that correct?

A I think so.

Q So you spoke with Mr. Williams himself and some of the family members. Anybody else who you spoke to?

A I don't remember. There may have been one or two friends of Mr. Williams or friends of the family here that we spoke to.

And I don't remember whether that was before trial or at trial, but I remember speaking to – I remember that I talked with someone who was not a family member.

Q Did you attempt to obtain any documents that might be relevant on the sentencing phase or on the mitigation issue in the sentencing phase? For example, did you attempt to get any school records of Mr. Williams?

[160] A I don't remember doing that, no. I remember something about school came up in some of the reports of the psychiatrist and psychologist, but I don't remember myself attempting to get school records.

Q Did you attempt to get any medical records of Mr. Williams?

A I do not remember.

Q I am sorry, you don't know?

A I do not remember. I don't know if I did or not.

Q Do you recall if you attempted to get any prison records of Mr. Williams?

A That would have been in his presentence report and in other reports by the psychiatrists and psychologists. I don't think I contacted any prisons for that information.

Q How about any, did you attempt to get any information from Youth and Family Services on Mr. Williams?

A I don't remember doing that.

Q Did you know that Mr. Williams had been taken away from his parents at a young age and been put in foster care for a few years?

A I don't know whether I knew that at that [161] time or not. I think there has been something about that in the presentence reports, but I am not sure.

Q But the presentence report is put together by someone else?

A Correct, and that would have been after the trial phase.

Q Did you attempt to get any employment records of Mr. Williams?

A I remember talking to Mr. Williams about his employment, and he did not indicate there was that much employment at all. And I don't think we followed up on it because I don't believe he had that much employment history that he talked about.

We maybe talked about that with mother or family members. I remember discussing it with someone else, as well, but no records, no.

Q Do you recall discussing with Mr. Motley about obtaining any of these records that I mentioned – correctional, medical, school?

A I know that we discussed education and we discussed his, the information that was given in the psychological reports or psychiatric reports, but I don't remember discussing – I don't remember whether we did

or not other than his education and his employment background.

[162] Q Do you recall that Dr. Centor and Dr. Ryans both testified at the sentencing phase that they believed there was a high probability that Mr. Williams would be a future danger?

A I remember them testifying. I remember at least one expert, I guess that those would have been the only two experts that testified at that point. I remember one of them at least testifying of future dangerousness.

I remember that evidence coming in. I don't remember who did it, I don't remember which doctor or whether they both did. I don't remember.

Q And is some of the reason why you may have trouble remembering is because Mr. Motley was handling this as opposed to you?

A Maybe so, because he was handling all the questioning concerning this.

Q Do you recall if it surprised you that these doctors came in and said Mr. Williams would be a future danger?

A No, it would not, based on the information that I had.

Q I think I had asked you earlier were you aware that Dr. Centor had said in a report that he [163] would not be a future danger?

A I remember you asking the question, yes.

Q Let me show you a document that has been marked Petitioner's Exhibit 2, and I have highlighted this, but I will just ask you to take a look at the document itself without the highlighting and see if you recall seeing that report.

A I remember seeing a report, but this doesn't look like a full report. This is just a letter to Mr. Motley.

Q Do you remember seeing that letter?

A I looked through Mr. Motley's file when we first started the case. And I assume this was in it, but I don't remember specifically seeing this letter, no.

Q Do you remember ever seeing anything like you see in this last paragraph that says that there is a low probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society?

A I don't remember seeing anything like that.

Q So what you are saying is that when Dr. Centor and Dr. Ryans said that he would be a future danger or a continuing threat to society, you were [164] not aware that at one time they had, at least Dr. Centor had a different opinion?

A it has been nine years ago, and I am sorry. I have a vague recollection of Dr. Centor who testified here in Danville and of course all over the state quite often, in one case in which I was involved testifying.

And someone talked to him, and he said – because there was an inconsistency – and he said, yes, but I didn't realize this prior background report.

I don't know if that was part of this case or not, so I had better say I don't know. But that is a vague recollection. I don't remember if I was surprised or not.

I guess that is not an answer to your question. The first part was not an answer to your question. I don't remember if I was surprised or not.

But by the time he testified, I was not surprised that he said what he said, because Dr. Mansheim had also said it, and we were very concerned about that.

Q And you don't recall if you saw this letter and knew at the time that he testified that at [165] one point he had said there was a low probability; is that correct?

A Again I have that vague recollection that I prefaced in my last remarks, so I will say I don't know whether I knew that at that time or even saw that letter or not.

I did look in Mr. Motley's file, and if it was in there I probably read the letter, but I don't remember if I saw it.

Q And do you recall if you and Mr. Motley had discussions about whether to put on any of these experts yourself of Mr. Mansheim or Dr. Centor or Dr. Ryans or was that pretty much Mr. Motley who was making those decisions at that time?

A Are we talking about the penalty phase?

Q The penalty phase.

A I remember a discussion a few days before the trial, because I was only appointed a month before, so I can't remember if it was very close to trial or not.

But I think it was fairly close to trial. And Mr. Motley, either I met him down here or I talked to him on the phone. And we said – he said that he had gotten a letter or talked to Dr. Mansheim. And I believe he said he had gotten a [166] letter, but I cannot be for sure.

And he said that we absolutely cannot use him on the penalty phase because Dr. Mansheim, I believe Mr. Motley's words, said that this was the scariest guy he had ever talked to, that he was of extreme future dangerousness.

And I believe that was in a letter, but I cannot – I did look through my file to see if I had that letter and I don't have it.

But I remember seeing that, but I do remember having that discussion with Mr. Motley that we could not use Dr. Mansheim because of that.

And of course the other two doctors testified for the Commonwealth, so we wouldn't have called them for that reason.

Q Dr. Centor and Dr. Ryans testified for the Commonwealth. Because they testified for the Commonwealth, you would not have called them? Is that what you meant?

A At the point in the trial, I guess that is what happened. At least by your questions I am pretty sure they both testified at the penalty phase, so we wouldn't have called them, we would have cross-examined them.

* * *

[168] Q So did you have a feeling at that time or a thought that whatever their evaluation was of Mr. Williams, it was probably going to help the Commonwealth more than your side?

A Well I wasn't appointed until after they reported, I think. So I don't know if I can answer that question. But their reports certainly indicated that they helped the Commonwealth more than our side.

Q In terms of your closing argument at the sentencing phase?

A Yes.

Q You and Mr. Motley both gave a closing argument. Do you recall that?

A Yes.

Q Did you discuss with Mr. Motley and he discuss with you what you were going to say before you said it?

A That was an interesting situation in that I don't think we discussed the closing argument. Well, let me back up and ask you to clarify the question. Are you talking about the sentencing phase?

Q Sentencing phase; correct.

A We had both made an argument on the [169] penalty phase, but I don't believe we had discussed me making any argument at the sentencing phase.

And I believe the Commonwealth's attorney suggested that both of us do. And he said that he didn't want any problems down the road.

And so about an hour before we made that argument, I started developing an argument. And we did discuss at that time, but until that time I believe Mr. Motley was going to make the final argument.

* * *

[172] And we were very careful not to mention anything about any opinion of Dr. Mansheim at that point, because we were afraid that the Commonwealth, the door would be open for him to render another opinion.

All we asked was a fact question about what Terry Williams had said to him. In retrospect that probably was hearsay because he was not basing any opinions on it.

So but it was allowed to be admitted into the record, something about bullets. We were very careful that that was the only thing we asked him.

We were not asking opinions because we were afraid of what Dr. Mansheim would say otherwise. So that also makes me think, makes me remember, refreshes my memory about the discussion with Mr. Motley.

Whether a letter exists or not, I thought I saw a letter, but I can't say that for sure, because I don't have one in my file.

[173] **CROSS EXAMINATION**

BY CONDON:

Q Mr. Smitherman, just to clarify, would this be a correct characterization, you were [174] basically second chair to Mr. Motley in this case?

A Yes.

Q He was the experienced capital murder trial lawyer, you had never tried one?

A That is correct.

Q Did he essentially make all the strategic and tactical decisions, maybe after discussions with you, but he called the shots?

A Yes.

Q Do you recall anything where you made a final decision without consulting him?

A No, I doubt if I made any final decisions at that point, but certainly not without discussing it with Mr. Motley.

Q Let's jump to the appeal in the spring of '87. I was handling for the Commonwealth, and I remember dealing with you. Do you remember the breakdown on the work load on the appeal? Did you all split it up or did you handle most of it or what?

A I think I handled a lot of the appeal; I handled quite a bit of the appeal.

Q Would you have handled more than Mr. Motley?

A Yes. Mr. Motley is a one-person firm, and I had resources where I could get documents [175] printed, and I had a library, and I had actually a lot more time than Mr. Motley.

Q You all raised a number of issues. Do you think you did most of the research on the assignments of errors in the argument?

A I think so.

Q And you talked about the strategy at the guilt phase as muddying the water. Did that have anything to do with the fact that was your strategy because of the confession that you were dealing with where Terry had said he had hit Mr. Stone with the mattock and he had taken the wallet?

A Yes, that was the real problem with the case was that as I said I think that the jury should have considered that, and I hope they did consider that in the penalty phase.

But he basically admitted to a murder that had not been investigated as a murder. And then they turn around and dig the body up and say you are right, you did this, and then they charged him with capital murder, which I thought was terrible.

Q You say you did find, you believe you found some people who corroborated Jannadean Stone's testimony that her father always kept the wallet in [176] the pocket.

Let me ask you this, in light of the fact that your client said he took the wallet, twice he said he took the wallet out of the pocket, were you really looking for something to the contrary?

A Well again, since we knew within a week before the case that the evidence was going to come in, and it was not going to be suppressed, that it was going to be very difficult to show something other than what Mr. Williams said.